(18,480.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 293.

MARC HUBBERT, PETITIONER,

vs.

CAMPBELLSVILLE LUMBER COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

INDEX.

	Original.	Print.
Transcript from the circuit court of the United States for the western district of Kentucky	1	1
Petition ordinary	1	1
Exhibit A—List of coupons	3	2
Summons	13	12
Judgment by default for $2,963.13	14	13
Motion to appoint commissioner	14	13
Order appointing commissioner	14	13
Order that commissioner's report lie over	15	14
Order setting cause for hearing	15	14
Order filing additional report of commissioner, &c	15	14
Additional report of commissioner	15	14
Letter of commissioner to Mattingly & Nesbitt, August 8, 1900, &c	16	15
Letter of Mattingly & Nesbitt to commissioner, September 25, 1900	17	15
Exceptions to commissioner's report	17	16

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 24, 1903.

	Original.	Print
Additional report of commissioner	19	17
Letter of Mattingly to commissioner, October 9, 1900	19	18
Letter of Mattingly to commissioner, November 3, 1900	20	18
Notice attached to report	21	19
Order overruling exceptions	21	19
Opinion	21	19
Order overruling exceptions and demurrer and confirming report of commissioner	23	21
List of parties	25	22
Additional report of commissioner and notice	95	63
Exceptions to report	96	63
Demurrer	97	64
Order denying motion to set aside judgment, &c	98	65
Bill of exceptions	99	66
Affidavit of U. P. Walling	99	66
Exhibit Copy of Bond	102	68
Affidavit of Ernest Macpherson	103	69
Copy of execution	104	70
Affidavit of Marc Hubbert	104	70
Report of commissioner, January 12, 1901	105	71
Judge's certificate to bill of exceptions	107	72
Order allowing writ of error	107	73
Petition for writ of error	107	73
Assignment of errors	108	73
Bond	110	75
Clerk's certificate	111	76
Writ of error	111	76
Citation	112	77
Appearance for plaintiff in error	115	78
Submission	115	78
Judgment	116	78
Opinion	116	79
Petition for rehearing	127	88
Order denying petition for rehearing	130	90
Clerk's certificate	130	90
Writ of certiorari	131	91
Return to writ of certiorari	132	91

1 *Transcript of Record.*

Proceedings of the circuit court of the United States for the district of Kentucky, at a regular term begun and held at the Federal Court hall, in the city of Louisville, on Monday, February 18th, A. D. 1901.

Present: Honorable Walter Evans, sitting as circuit judge.

MARC HUBBERT, Plaintiff,
vs.
TAYLOR COUNTY, Defendant.

Be it remembered, that heretofore, to wit, on the 20th day of January, A. D. 1899, came the plaintiff, by counsel, and filed in the clerk's office his petition, in the above-styled cause, which said petition is as follows, to wit:

Circuit Court of the United States for the District of Kentucky.

MARCH HUBBERT, Plaintiff,
vs.
TAYLOR COUNTY, Defendant.

Petition Ordinary.

Plaintiff March Hubbert states that he is a citizen of the State of Indiana, and that the defendant, Taylor County, is a municipal corporation of and in the State of Kentucky, and is within the meaning of the laws conferring jurisdiction upon this court, a citizen of said State. That by an act of the legislature of the State of Kentucky approved March 18, 1878, it was enacted that the county of Taylor should be empowered to make and enter into a contract or contracts for the compromise, purchase and redemption of all bonds, judgments and other indebtedness of said county growing out
2 of the issue of bonds or coupons theretofore issued by said county, and that said county acting through its county court and such agents as might be appointed by said court, should be empowered to execute and carry out said contracts, and for that purpose was authorized to issue new bonds of said county not exceeding $125,000 in amount in such denominations and on such time as the county might deem proper and bearing any rate of interest not exceeding eight per cent. per annum, with coupons attached and interest payable semi-annually at such time and place as the county might deem best; said bonds to be signed by the county judge and county clerk with the seal of the county attached, and the coupons to be signed by the clerk alone.

Said act further provided that the said county court should have the right to sell all or any number of said bonds at not less than par

value, the proceeds of which were to be used to buy the then outstanding bonds of the county at rates not exceeding fifty cents on the dollar, or for exchange for such old bonds upon such terms as might be agreed on with the holders thereof, but not to exceed fifty cents on the dollar for said old bonds.

That by an act entitled "An act to amend the foregoing act," approved Feb. 27th, 1882, said original act was so amended as to increase the authorized issuance of new bonds from $125,000 to $150,000; that in pursuance of the powers conferred by said act as amended, defendant, The County of Taylor, did enter into contracts with persons holding its bonds theretofore issued and did succeed in compromising with said holders upon the terms mentioned, in said act, and for the purpose of carrying out such compromise, did cause to be issued, and sold at par its bonds to the aggregate amount of $150,000 bearing interest at the rate of six per cent. per annum, which interest was evidenced by coupons attached to each bond and signed by the county clerk.

Plaintiff says that he is the holder and owner of coupons from said bonds aggregating the sum of $2556 in face value, and maturing prior to the bringing of this suit, no one of which has been paid in whole or in part. Said coupons are all in the following form except as to numbers, amounts and dates of maturity:

"The County of Taylor, State of Kentucky, will pay bearer one dollar and 50/100 ($1.50) on the 1st day of April, 1896, at the Bank of Kentucky, in the city of Louisville, State of Kentucky, bearing interest for six months on bond No. 62.

A. J. CAMPBELL,
County Clerk."

3 The aggregate amounts and maturities of said coupons are as follows:

Coupon No. 15, due April 1st, 1895	$36
Coupon No. 16, due Oct. 1st, 1895	36
Coupon No. 17, due Apr. 1st, 1896	939
Coupon No. 18, due Oct. 1st, 1896	1209
Coupon No. 19, due Apr. 1st, 1897	24
Coupon No. 20, due Oct. 1st, 1897	87
Coupon No. 21, due Apr. 1st, 1898	171
Coupon No. 22, due Oct. 1st, 1898	54
Total	$2556

A full and detailed list of said coupons is herewith filed marked "Exhibit A."

Said original coupons are also filed with the clerk bearing the coupon and bond numbers as set out in "Exhibit A."

Wherefore, plaintiff prays judgment against the defendant for the amount of said coupons with interest from their respective matu-

rities and for his costs herein expended and for all other and proper relief.

HARRIS & MARSHALL,
For Plaintiff.

Exhibit "A" above referred to is as follows:

No. 15:

Bond No.			
116	Interest from Ap'l 1, 1895	1.50	
117		1.50	
691		3.	
2		3.	
3		3.	
4		3.	
776		3.	
7		3.	
1019		15.	36.00

No. 16:

116	Interest from Oct. 1, 1895	1.50	
117		1.50	
691		3.	
2		3.	
3		3.	
4		3.	
776		3.	
777		3.	
1019		15.	36.00

4 No. 17:

62	Ap'l 1, 1896	1.50	
63		1.50	
67		1.50	
68		1.50	
87		1.50	
89		1.50	
92		1.50	
93		1.50	
94		1.50	
96		1.50	
97		1.50	
98		1.50	
99		1.50	
102		1.50	
104		1.50	
106		1.50	
110		1.50	
111		1.50	
112		1.50	
113		1.50	

115	.....	1.50	
129	.....	1.50	
145	.....	1.50	
146	.....	1.50	
		36.	72.

No. 17:

Bond No.	For'd.....	36.	72.
147	April 1st, 1896.....	1.50	
148	.....	1.50	
149	.....	1.50	
150	.....	1.50	
151	.....	1.50	
152	.....	1.50	
154	.....	1.50	
157	.....	1.50	
158	.....	1.50	
166	.....	1.50	
167	.....	1.50	
168	.....	1.50	
169	.....	1.50	
170	.....	1.50	
171	.....	1.50	
172	.....	1.50	
173	.....	1.50	
174	.....	1.50	
5			
175	.....	1.50	
176	.....	1.50	
502	.....	3.	
508	.....	3.	
553	.....	3.	
570	.....	3.	
571	.....	3.	
573	.....	3.	
574	.....	3.	
602	.....	3.	
603	.....	3.	
604	.....	3.	
605	.....	3.	
606	.....	3.	
607	.....	3.	
610	.....	3.	
612	.....	3.	
613	.....	3.	
615	.....	3.	
617	.....	3.	
618	.....	3.	
619	.....	3.	
620	.....	3.	

621	.....	3.	
622	.....	3.	
623	.....	3.	
644	.....	3.	
648	.....	3.	
663	.....	3.	
664	.....	3.	
665	.....	3.	
666	.....	3.	
668	.....	3.	
		159.	72.

Coupon No. 17:

Bond No.	Forward.....	159.	72.
669	Ap'l 1, 1896.....	3.	
670	.....	3.	
673	.....	3.	
674	.....	3.	
675	.....	3.	
676	.....	3.	
679	.....	3.	
681	.....	3.	
683	.....	3.	
684	.....	3.	

6

685	.....	3.	
687	.....	3.	
690	.....	3.	
697	.....	3.	
701	.....	3.	
703	.....	3.	
704	.....	3.	
715	.....	3.	
719	.....	3.	
722	.....	3.	
731	.....	3.	
732	.....	3.	
733	.....	3.	
734	.....	3.	
735	.....	3.	
740	.....	3.	
743	.....	3.	
744	.....	3.	
745	.....	3.	
755	.....	3.	
756	.....	3.	
757	.....	3.	
758	.....	3.	
759	.....	3.	
760	.....	3.	

763		3.	
764		3.	
765		3.	
772		3.	
779		3.	
780		3.	
781		3.	
782		3.	
783		3.	
784		3.	
785		3.	
		297.	72.

Coupon No. 17:

Bond No.	Forward	297.	72.
786	Ap'l 1st, 1896	3.	
787		3.	
788		3.	
789		3.	
953		15.	
963		15.	
964		15.	
966		15.	
967		15.	
968		15.	
972		15.	
973		15.	
974		15.	
975		15.	
977		15.	
978		15.	
979		15.	
986		15.	
987		15.	
988		15.	
989		15.	
990		15.	
991		15.	
993		15.	
994		15.	
995		15.	
996		15.	
1006		15.	
1007		15.	
1014		15.	
1015		15.	
1017		15.	
1018		15.	
1021		15.	

1022		.....	15.	
1023		.....	15.	
1042		.....	15.	
1044		.....	15.	
1051		.....	30.	
1052		.....	30.	
1054		.....	30.	
1055		.....	30.	
				939.
	No 18:			
7	Oct. 1, 1896	.....	1.50	
32		.....	1.50	
46		.....	1.50	
62		.....	1.50	
63		.....	1.50	
67		.....	1.50	
68		.....	1.50	
			10.50	1011.
8	Coup. No. 18:			
Bond No.		Forward.....	10.50	10.11
87	Oct. 1, 1896	.....	1.50	
89		.....	1.50	
93		.....	1.50	
94		.....	1.50	
96		.....	1.50	
97		.....	1.50	
98		.....	1.50	
99		.....	1.50	
102		.....	1.50	
104		.....	1.50	
106		.....	1.50	
110		.....	1.50	
111		.....	1.50	
112		.....	1.50	
113		.....	1.50	
115		.....	1.50	
129		.....	1.50	
145		.....	1.50	
146		.....	1.50	
147		.....	1.50	
148		.....	1.50	
149		.....	1.50	
150		.....	1.50	
151		.....	1.50	
152		.....	1.50	
154		.....	1.50	
157		.....	1.50	
158		.....	1.50	
166		.....	1.50	

167	.....	1.50	
168	.....	1.50	
169	.....	1.50	
170	.....	1.50	
171	.....	1.50	
172	.....	1.50	
173	.....	1.50	
174	.....	1.50	
175	.....	1.50	
176	.....	1.50	
502	.....	3.	
508	.....	3.	
553	.....	3.	
570	.....	3.	
571	.....	3.	
573	.....	3.	
574	.....	3.	
		90.	1011.

9 Coup. No. 18:

Bond No.	Forward.....	90.	1011.
577	Oct. 1, 1896.....	3.	
592	.....	3.	
593	.....	3.	
602	.....	3.	
603	.....	3.	
604	.....	3.	
605	.....	3.	
606	.....	3.	
607	.....	3.	
610	.....	3.	
612	.....	3.	
613	.....	3.	
615	.....	3.	
617	.....	3.	
618	.....	3.	
619	.....	3.	
620	.....	3.	
621	.....	3.	
622	.....	3.	
623	.....	3.	
644	.....	3.	
648	.....	3.	
663	.....	3.	
664	.....	3.	
665	.....	3.	
666	.....	3.	
668	.....	3.	
669	.....	3.	
670	.....	3.	

671	.....	3.	
672	.....	3.	
673	.....	3.	
674	.....	3.	
675	.....	3.	
676	.....	3.	
679	.....	3.	
681	.....	3.	
683	.....	3.	
684	.....	3.	
685	.....	3.	
686	.....	3.	
687	.....	3.	
690	.....	3.	
695	.....	3.	
697	.....	3.	
698	.....	3.	
10			
701	.....	3.	
703	.....	3.	
704	.....	3.	
715	.....	3.	
719	.....	3.	
		243.	1011.

Coup. No. 18:

Bond No.	Forward.....	243.	1011.
722	Oct. 1, 1896.....	3.	
731	.....	3.	
732	.....	3.	
733	.....	3.	
734	.....	3.	
735	.....	3.	
740	.....	3.	
743	.....	3.	
744	.....	3.	
745	.....	3.	
755	.....	3.	
756	.....	3.	
757	.....	3.	
758	.....	3.	
759	.....	3.	
760	.....	3.	
763	.....	3.	
764	.....	3.	
765	.....	3.	
772	.....	3.	
779	.....	3.	
780	.....	3.	
781	.....	3.	

782		3.	
783		3.	
784		3.	
785		3.	
786		3.	
787		3.	
788		3.	
789		3.	
873		3.	
952		15.	
953		15.	
963		15.	
964		15.	
965		15.	
966		15.	
11			
967		15.	
968		15.	
969		15.	
972		15.	
973		15.	
974		15.	
975		15.	
977		15.	
		549.	1011.

Coup. No. 18:

Bond No.	Forward	549.	1011.
978	Oct. 1, 1896	15.	
979		15.	
982		15.	
983		15.	
984		15.	
986		15.	
987		15.	
988		15.	
989		15.	
990		15.	
991		15.	
993		15.	
994		15.	
995		15.	
996		15.	
1004		15.	
1005		15.	
1006		15.	
1007		15.	
1010		15.	
1013		15.	
1014		15.	

1015	.....	15.	
1016	.....	15.	
1017	.....	15.	
1018	.....	15.	
1021	.....	15.	
1022	.....	15.	
1023	.....	15.	
1024	.....	15.	
1025	.....	15.	
1028	.....	15.	
1030	.....	15.	
1041	.....	15.	
1042	.....	15.	
12			
1044	.....	15.	
1051	.....	30.	
1052	.....	30.	
1054	.....	30.	
1055	.....	30.	1209.
19:			
686	Ap'l 1, '97.....	3.	
695	.....	3.	
698	.....	3.	
1005	.....	15.	
			24.
			2244.

Coupon No. 20:

Bond No.	Forward.....	.....	2244.
511	Oct. 1, 1897.....	3.	
538	.....	3.	
552	.....	3.	
561	.....	3.	
564	.....	3.	
584	.....	3.	
591	.....	3.	
625	.....	3.	
627	.....	3.	
630	.....	3.	
667	.....	3.	
718	.....	3.	
778	.....	3.	
875	.....	3.	
1005	.....	15.	
1012	.....	15.	
1020	.....	15.	
			87.

21:

510	Ap'l 1, 1898.....	3.	
511	.....	3.	
552	.....	3.	
538	.....	3.	
561	.....	3.	
564	.....	3.	
584	.....	3.	
591	.....	3.	
625	.....	3.	
627	.....	3.	
630	.....	3.	
649	.....	3.	
667	.....	3.	
718	.....	3.	
778	.....	3.	
875	.....	3.	
13			
876	.....	3.	
954	.....	15.	
959	.....	15.	
1005	.....	15.	
1008	.....	15.	
1009	.....	15.	
1011	.....	15.	
1012	.....	15.	
1020	.....	15.	
			171.
			2502.

Coup. No. 22:

Bond No.	Forward.....	.....	2502.
510	Oct. 1, 1898.....	3.	
649	.....	3.	
876	.....	3.	
954	.....	15.	
1009	.....	15.	
1011	.....	15.	
			54.
			2556.

Upon which petition there issued the following process:

The President of the United States of America to the marshal of the Kentucky district, Greeting:

You are commanded to summon Taylor County, to answer on the first day of the next February term of the circuit court of the United States for the district of Kentucky, to be held at the city of Louis-

ville, a petition against it in said court by Marc Hubbert, and warn it that upon its failure to answer, the petition will be taken for confessed, or it will be proce-ded against for contempt and you will make due return of this summons on the first day of next term of said court.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, at Louisville, in the said district this 21st day of January, in the year of our Lord, 1899, and of our Independence, the 123.

[SEAL.] THOS. SPEED,
C. C. C., K. D.

Upon which the marshal made the following return:

Executed the within on Taylor County by delivering a copy of same to J. W. Cloyd, judge of Taylor county, this Jan. 27th, 1899.

A. D. JAMES, *U. S. M.*,
By W. H. POWER, *D. M.*

14 And on the 10th day of April, 1899, came the plaintiff, by Harris & Marshall, his attorneys, and on his motion leave is given the United States marshal to amend his return on the summons herein. Thereupon came the United States marshal and amended his return on the summons in accordance with the facts. Thereupon, on motion of the plaintiff, by his attorneys, and it appearing to the court that the defendant herein has been duly served with process, and though solemnly called, came not, but made default. It is therefore considered by the court that the plaintiff, Marc Hubbert, recover of the defendant, The County of Taylor, in the State of Kentucky, the sum of two thousand nine hundred and sixty-three dollars and thirteen cents, the debt in the petition demanded, with interest thereon at the rate of six per cent. per annum, from the 10th day of April, 1899, until paid; also his costs herein expended, for which he may have execution.

And on the 13th day of July, 1900, came the plaintiff, by Harris & Marshall, his attorneys, and moves the court to refer this cause to a commissioner with instructions to ascertain and report on a day to be named, in the order the amount which it will be necessary for the holders or owners of real and personal property in Taylor county, subject to taxation under the revenue laws of the State, to pay, in order to raise promptly in proportion to the value of such property owned by each a sum sufficient to discharge the judgment herein and all costs of collecting the same, making due allowance for all probable delinquencies.

Came the defendant, having Ernest Macpherson for its attorney, and objects to said motion, and the court not being advised thereof, takes time.

And on the 16th day of July, 1900, the following order was entered:

This cause coming on to be heard on plaintiff's motion to refer this case to a commissioner, and on the affidavit filed in support

thereof, and having been argued by counsel for the plaintiff and for Taylor County, the court is of opinion and finds that such serious obstruction is likely to be offered to the enforcement of the judgment herein, as will materially delay it. It is therefore considered that plaintiff's motion be and the same is hereby sustained, and that David L. May be and he is hereby appointed
15 a commissioner, to whom this case is referred, with instructions to ascertain and report on or before the 30th day of July next the amount which it will be necessary for the holders or owners of all real and personal property in Taylor county, subject to taxation under the revenue laws of the State of Kentucky, to pay in order to raise promptly in proportion to the value of such property owned by each, a sum sufficient to pay the judgment herein and all costs of this suit, and the costs of collecting the same, making all due allowance for probable delinquencies, and the officers of Taylor county, having charge of the books containing the last assessment for the purpose of State taxation, are required to deliver them to the said commissioner to be by him used in making out his report, to which the defendant excepts.

And on the 30th day of July, 1900, came David L. May, special commissioner, and filed his report herein, which is ordered to lie over until the first day of October next, for exceptions.

And on the 1st day of October, 1900, came the parties, by their attorneys, and on their motion it is ordered that this case be set for hearing October 6th, 1900.

And on the 6th day of October, 1900, came David L. May, special commissioner, and filed his additional report explaining his failure to advertise the filing of his original report, and thereupon it is ordered by the court that the said May do readvertise the filing of said report as required by law, and this case is set for hearing on said report, on November 30th, 1900.

The additional report above referred to is as follows:

Circuit Court of the United States for the District of Kentucky.

MARC HUBBERT, Plaintiff,
vs.
TAYLOR COUNTY, Defendant.

Additional Report of David L. May, Commissioner.

David L. May, special commissioner, appointed by the court in this case, reports to the court that he made out and filed on
16 the 30th day of July, a report in conformity to the court's order, and on the 8th day of August, he wrote to Mattingly & Nesbitt, publishers of the Marion County Enterprise, a letter which is herewith filed, requesting them to publish a notice of the

filing of said report, and thereafter, on or about the 9th day of August, paid them $4.50, their charge for said publication. Your commissioner states that said publication appeared in the issue of the Lebanon Enterprise, for August 10th, and that he was assured by said publishers that it would appear in the two following issues of the paper, and supposed that it had so appeared, until September 25, 1900, when he received a letter from said publishers explaining its failure to appear.

Your commissioner files herewith his letter of August 8th, with the answer thereto written across the face thereof, and the letter of Mattingly & Nesbitt, dated September 25th.

DAVID L. MAY,
Special Commissioner.

LOUISVILLE, KY., *Aug. 8th*, 1900.

Messrs. Mattingly & Nesbitt.

GENTLEMEN: I enclosed to you a notice, to Taylor County, in my letter of the 2nd, with request that you publish the same in three issues of your paper of the following dates Aug. 10th, 17th, 24th, and acknowledge the receipt of said notice. I asked this that I might make my report as special commissioner to the U. S. court, and as I will make my report on Friday, 10th, I would like to state in said report that the notice is in the hands of the printer and will appear on the dates above stated. So will please acknowledge the receipt of said notice, and oblige,

Yours truly,
D. L. MAY,
Special Commissioner, 216 *West Main St., Louisville, Ky.*

(Reply:) Notice will appear tomorrow, August 10th, 1900, as per instructions, and will run three insertions.

LEBANON ENTERPRISE,
Per THOS. W. MATTINGLY.

August 9th, 1900, Lebanon, Ky.

17 LEBANON, KY., *Sept. 25th*, 1900.

Mr. D. L. May, Elizabethtown, Ky.

DEAR SIR: On referring to my files I find that your notice in the Marc Hubbert case against Taylor County appeared in the Lebanon Enterprise on date of Aug. 10 only. I was of the opinion that the advertisement had been properly set and properly marked, and would have stated positively had I been asked that it appeared in the Enterprise three dates, and that the papers had been forwarded to you. We had been carrying bankrupt notices which never appear but one time, and it must have been that our foreman mistook this notice for one of these and had it thrown in. This was an honest mistake, and I am very sorry of it, as it possibly has given you unnecessary trouble and through no fault of yours whatever. The first notice ran al-right, and I thought this one had been inserted the proper number of times. On the 10 of August I charged it up for

the full time, and thought of course the foreman would make no mistake in the number of insertions. As you have remitted for the full amount charged, $4.00, four dollars, I am ready to return you the said sum. If, however, the advertising has to be done over, I am willing and would be only too glad to remedy the mistake by giving the three insertions without extra pay.

Trusting that this explanation will be satisfactory, and asking you to consider our mistake as purely unintentional, we are,

Yours truly, MATTINGLY & NESBITT,
Per M.

And on the 19th day of November, 1900, came the defendant, Taylor County, by counsel, and filed its exceptions to the commissioner's report herein, which are as follows:

Circuit Court of the United States, District of Kentucky.

MARC HUBBERT, Plaintiff,
vs.
TAYLOR COUNTY, Defendant.

Exceptions to the Commissioner's Report.

18 The defendant, Taylor County, without waiving its objections to the proceedings herein, but still insisting and relying upon same, comes and excepts to the report of David L. May, commissioner herein, and for grounds it says:

1st. That the act of February 27th, 1882, upon which this proceeding is based, was repealed by the constitution of Kentucky adopted September 28th, 1891, by reason of its inconsistency with sections 171 and 181 of said constitution, and it is not now and has not been at any time since the institution of this proceeding in force as a law of Kentucky.

2nd. Said report is incorrect, because it does not show the true "amount which it would be necessary for the holders or owners of any such property to pay in order to raise promptly in proportion to the value of such property owned by each a sum sufficient to pay the said judgment and all cost of said suit and the cost of collecting the same, making due allowance for probable delinquencies."

3rd. Said report shows on its face that the rate of assessment fixed by the commissioner in said report, viz., $1.40 on each $100 worth of property, is excessive, and would be sufficient to raise promptly a sum very greatly in excess of what would be necessary to pay complainant's debt and all interest and cost, including the cost of collecting.

4th. That the allowance in said report for probable delinquencies is undue, excessive and unjust, and is not the character of allowance contemplated by the act of 1882 for said purpose.

5th. That the supposed opposition of the property-holders and owners of the county to the payment of the debt, and not the value or availableness of the property therein, is made the basis upon

which the rate of assessment is fixed in said report; and which is not a correct or a proper basis upon which to fix the rate of assessment.

6th. That no allowance has been made in said report for such persons as paid their taxes in advance under the provisions of the act of March 18th, 1878.

7th. That judgment rendered in conformity with said report in its present form would be for a much greater amount that was authorized by the act of 1882.

8th. That the report was not made from the assessor's books of Taylor county, as required by the act of 1882, but was taken from a report made in another suit.

9th. That said report, and each and every act of the commissioner in making same, are without warrant or authority of law.

Upon all which the defendant prays the judgment of the court.

TAYLOR COUNTY,
By Attorney.

19 And on the 30th day of November, 1900, came David L. May, special commissioner, and filed an additional report explaining the failure to advertise the filing of his report, and thereupon it is ordered by the court that said May do readvertise in the Lebanon Enterprise the filing of said report as required by law, and this case is set for hearing on said report on January 12th, 1901. Came also B. A. Rice, attorney for Taylor County, and filed his brief in support of his exceptions to the report, and the cause is submitted on said exceptions.

The additional report above referred to is as follows:

Circuit Court of the United States for the District of Kentucky.

MARC HUBBERT, Plaintiff,
vs.
TAYLOR COUNTY, Defendant.

Additional Report of David L. May, Commissioner.

David L. May, special commissioner, appointed by the court in this cause, reports that since the order of court made in this cause on the 6th day of October, he again directed an advertisement to be inserted in the Lebanon Enterprise, on the 12th, 19th and 26th days of October, and said publication was made in the issues of said paper for October 12th, and 26th, but was omitted on the 19th. The commissioner files herewith the letters from the editor, dated October 9th, agreeing to make the publication, and of November 3rd, explaining the failure to make same on the 19th. The commissioner further reports to the court that he has directed, and the publisher has agreed to publish, the said notice on the 16th, 23rd and 30th of November.

Respectfully submitted,

DAVID L. MAY,
Special Commissioner.

LOUISVILLE, KY., *Oct. 9th*, 1900.

D. L. May, special commissioner of the circuit court of the United States for the district of Kentucky:

We are in receipt of your notice to Taylor County, March
20 Hubbert, plaintiff, *vs.* Taylor County, defendant, and the said notice will appear in three different issues of our paper (the Lebanon Enterprise) on the following dates, namely, Oct. 12th, 19th and 26th. And y can so report to the honorable court.

Respectfully, LEBANON ENTERPRISE,
Per THOS. W. MATTINGLY.

LEBANON, KY., *Nov.* 3, 1900.

Mr. D. L. May, Louisville, Ky.

MY DEAR SIR: From our talk over the telephone this morning, it is plain you are under a false impression in reference to the trouble I have been having with the notice of "March Hubbert *vs.* Taylor County." It just seems to be one of those cases that sometimes gets wrong and is hard to straighten out. I don't believe our foreman has done any wrong in this matter intentionally. It was simply an error. Mr. Nesbitt, who usually looks after such matters, set this notice out of the forms after its first publication, and the party whom he left when he went to Chicago overlooked it, and therefore its omission on the 19th. The trouble it has given is worth ten times the amount of the cost of advertising to both you and myself. Where a man has ten thousand little things to look after, as I have in the publishing of the Enterprise, it is a stupendous task to keep down errors absolutely or to see that nothing is omitted, in an issue in time to correct it. It is true that I never had this trouble before with anything except "patent medicine" notices, and I had rather forfeited $50.00 than to have had this to occur, especially as it was the second time.

If you will overlook this error, just this time, I will personally superintend its publication on any three dates, Fridays, that you will name and guarantee that everything will be al- right.

Very respectfully, THOMAS W. MATTINGLY.
LEBANON ENTERPRISE.

P. S.—What inducement do you think there could be on the part of any one to prevent the publication of this notice as required by law?

DITTO.

21 *Notice Attached to Report.*

Circuit Court of the United States for the District of Kentucky.

MARC HUBBERT, Plaintiff,
vs.
TAYLOR COUNTY, Defendant.

Notice.

Notice is hereby given that I have filed in court my report in the above case, showing the amount which it will be necessary for each of the taxpayers of Taylor county to pay in order to pay off the judgment herein, and that said report is subject to exceptions to be filed in the clerk's office until November 30th, 1900.

DAVID L. MAY,
Special Commissioner.

Oct. 12–3 t.

And on the 15th day of December, 1900, came the parties, by their attorneys. The court being now fully advised of the exceptions of the defendant to the report of the commissioner herein, delivered a written opinion, which is filed, and in pursuance thereof it is ordered that said exceptions be and the same are hereby overruled.

The opinion above referred to is as follows:

United States Circuit Court, District of Kentucky.

MARC HUBBERT, Plaintiff,
vs.
TAYLOR COUNTY, Defendant.

Opinion.

Without inquiring into the right of Taylor County to file exceptions to the commissioner's report on behalf of the individual taxpayers, the court will dispose of the exceptions thereto upon other grounds.

The principal contention on behalf of the county in support of the exceptions is that the special act under which this proceeding
22 has been taken has been repealed by the operation of the present constitution of the State of Kentucky, particularly section 171, which provides that "all taxes shall be levied and collected by general laws," and section 181, which provides that "the General Assembly shall not impose taxes for the purposes of any county, city, town or other municipal corporation, but may by general laws confer upon the proper authorities thereof respectively the power to assess and collect such taxes," and the further provision of the constitution, in Schedule 1, "that the provisions of all laws which are inconsistent with this constitution shall cease upon its

adoption, except that all laws which are inconsistent with such provisions as require legislation to enforce them shall remain in force until such legislation is had, but not longer than six years after the adoption of this constitution, unless sooner amended or repealed by general laws." It is insisted that the act of 1882, under which this proceeding is had, being a mere local and not a general law, is no longer in force for the purpose of levying and collecting taxes for the payment of the bonds of the county, but the court is of opinion that the special provisions of that act are so obviously and certainly an essential part of the contract between the county and the holders of its bonds, that many cases like those about to be named show that even if the State constitution intended and attempted to repeal that act, the constitution was ineffective to do so, because the doing it would impair the obligation of the contract between the parties of which the effective remedy provided by that act was a part, and would thus violate the Constitution of the United States. Seibert *vs.* Lewis, 122 U. S. 288, and the cases therein cited, fully sustain this view, and in the case of Seibert *vs.* United States, 129 U. S. 192, the former decision was reaffirmed, the court stating that its opinion therein had been most carefully considered.

But viewing the matter from another standpoint, the results must be the same. The court has found no legislation enacted since the adoption of the new constitution in 1891, except section 907 of the Kentucky statutes, which bears upon the subject, and that section is as follows:

"All laws and parts of laws which authorize any county, or subdivision thereof, or any city, town or incorporated district to become a stockholder in any company, association or corporation, or to obtain or appropriate money for, or to loan its credit to, any corporation, association or individual, except for the purpose of constructing or maintaining bridges, turnpike roads or gravel roads, are
23 hereby repealed. But nothing in this act contained shall in anywise affect subscriptions to stock, the obtaining or appropriating of money, or loaning of credit, that may have been made or done before the passage of this act."

The only reasonable deduction from this section is that the legislature, even if it had the power to repeal them, intended that statutes such as the act of 1882, should remain in full force. If this be not so, then there is no remedy afforded by law for the effective enforcement of the defendant's obligation, nothwithstanding the statute under which the bonds were issued, and upon the faith in which they were purchased, provided an efficient remedy for the collection of the money the county solemnly contracted and faithfully promised to pay. This result would be most unjust, and it is fortunately prevented by the Constitution of the United States.

The second contention of the defendant is that the act of 1882 only authorizes the "court of the county rendering the judgment" to apply or afford the remedy here invoked, but the cases are numerous and unmistakable to the effect that this court can, in a proper litigation, exert all the powers that any court in Kentucky may

have under the act. Those powers are available for any person authorized to sue in this court.

It seems to the court also that the commissioner, in his report, shows that he obeyed the orders of the court appointing him, and also that those orders conform to the requirements of the act of 1882.

The exceptions to the report of the commissioner are otherwise altogether too vague and general to require further attention, and it is the opinion of the court that all of the exceptions taken to the report of the commissioner should be and they are overruled.

WALTER EVANS, *Judge.*

And on the 12th day of January, 1901, came David L. May, special commissioner herein, and filed an additional report. Came also the plaintiff, by W. O. Harris, his attorney. Came also the defendant Taylor County, by B. A. Rice, its attorney, and filed exceptions to the commissioner's report herein, and the court being fully advised thereof, it is ordered that said exceptions be and the same *is* hereby overruled, to which the defendant excepts.

Came again the defendant, by its said attorney, and filed a general demurrer to the proceedings herein, and the court being
24 fully advised thereof, it is ordered that the said demurrer be and the same is hereby overruled, to which the defendant excepts,

This day came the special commissioner, David L. May, and filed his report showing the publication by him of the notice in the Lebanon Enterprise, a newspaper published in Marion county, in the issues thereof from November 16th, November 23rd and November 30th, stating that the said May had theretofore filed in this court a report showing the amount necessary to be paid by each of the taxpayers of Taylor county, in order to pay off the judgment in this cause, and further stating in said notice that said report would be subject to exceptions to be filed in the clerk's office of this court on or before January 7th, 1901, and no exceptions having been filed to said report except those which were heretofore filed by Taylor County, and overruled, the court being fully advised, it is considered that the said report be and the same is hereby approved and confirmed, and that the plaintiff, Marc Hubbert, is entitled to recover judgment against each of the taxpayers in said report for the amounts therein named, and that at the expiration of ninety days from this date several executions shall issue against all said persons who have not then paid to the marshal of this court the sums reported to be due by them, respectively, which executions may be levied on any property subject to taxation for State revenue purposes held by the defendants or which were so held by them at the date of the judgment. It is therefore considered that plaintiff do recover against the parties named in said report as follows:

25 District No. 1.

	Land.	Town lots.	Personal.	Total.	Tax.
Bell, Tol B.	300			300	$4 20
Booker, D. H.	300			300	4 20
Bloyd & Hash.			600	600	8 40
Beams, C. E			120	120	1 40
Bell, George A	186			186	2 60
Beams, James L.	300		360	660	9 24
Berry, Sarah	660			660	9 24
Bloyd, L. F.	162			162	2 26
Beams, W. L.	325		133	458	6 42
Beams, Sarah A.	225			225	3 16
Bloyd, W. H	319		110	429	6 00
Coakley, Emma S.	125			125	1 74
Collins, David	25			25	36
Coaklet, Edgar C	150		19	169	2 36
Chaney, J. H.			15	15	22
Chaney, Emily	300		39	339	4 74
Coakley, Sarah E.	200			200	2 80
Coakley, Willia J.	500			500	7 00
Durrett, Ben. O.	2184		613	2797	39 16
Despain, J. H.	100			100	1 40
Despain, C. L.	125			125	1 74
Durrett, J. R.			1246	1246	17 44
Druin, R. G.	40			40	56
Despain, Mrs. Georgia A.	12			12	16
Despain, Nancy	124			124	1 74
Darnell, J. H.	20			20	28
Earle, Laura	235			235	3 30
Ford, A. L.	390		272	662	9 26
Franklin, William	40			40	56
Gaddie, R. J	98			98	1 36
Goff, William	666			666	9 32
					162 62
26					
For'd					$162 62
Gravatt, William	60			60	84
Gaddie, G. B.	310			310	4 34
Gaddie, Chas. E.	300			300	4 20
Gaddie, J. W.	700		128	828	11 60
Gaddie, Jesse M.	64			64	90
Hash, Henry	1750		540	2290	32 06
Hegspath, Holland	180			180	2 52
Hash, Henry, Jr.	1000		24	1024	14 34
Howell, J. D.	70			70	98
Howell, Samuel	600			600	8 40
Hall, W. B.	125			125	1 74
Hall, John W.	300			300	4 20
Haselwood, Moses			9	9	12
Haselwood, R. W.	1000		60	1060	14 84
Hegspath, W. A.	340			340	4 76
Hall, John E.	290			290	4 06
Hash, W. R.	800		117	917	12 84
Hedgspath, J. R.			86	86	1 20
Hedgspath, Jno. F.	475		264	739	10 34
Hedgspath, Robert	100			100	1 40
Hedgespeth, Jerry	482		4	486	6 80
Huber, K. W.	50			50	70
Houston, Mary F.	170			170	2 38
Hedgspath, J. B.	62			62	86

Dist. No. 1 (cont'd).

	Land.	Town lots.	Personal.	Total.	Tax.
Johnson, Jesse	300			300	$4 20
Johnson, Louis G.			75	75	1 04
Johnson, Mary	40			40	56
Johnson, Louis	540		73	613	8 58
Johnson, Randal M.	80			80	1 12
Johnson, James R.	120			120	1 68
Kirtley, W. W.	150		229	379	5 30
					331 52
27					
Forward					$331 52
Kirtley, Mrs. Lou. M.	50			50	70
Lee, Henry	150			150	2 10
Matherly, P. L.	92			92	1 28
Mills, Robert C.	176			176	2 46
Miller, Margaret A	80			80	1 12
McCorkle, J. R.	200			200	2 80
Morris, Franklin G.	100			100	1 40
Morris, Sarah A.	125			125	1 74
Morris, George C.	150			150	2 10
Morris, L. F.			40	40	56
Matherly, Sarah E.	700			700	9 80
Morris, Charles C.			40	40	56
Morris, J. B.	456			456	6 38
Matherly, James K.			65	65	92
Matherly, Ed. F.	100			100	1 40
Morris, John F.	400		845	1245	17 44
Mills, J. R.	200			200	2 80
Miller, Louis P.	520			520	7 28
Nelson, William	25			25	36
Nelson, Elizabeth	1350		10	1360	19 04
Nelsom, James	200			200	2 80
Melson, Thomas J.	350			350	4 90
Orrender, W. J.	200		46	246	3 44
Orrender & Warren			270	270	3 78
Oaks, Ursley	50			50	70
Overfelt, John A.	70		452	522	7 30
Purvis, Jesse (N. R.)	150			150	2 10
Price, Sylvester, N. R.	40			40	56
Purvis, J. T.	200		161	361	5 06
Perkins, John	125			125	1 74
Purvis, W. W.	810		275	1085	15 20
					$461 34
28					
					461 34
Price, Sylvester E.	167			167	2 34
Purvis, Jane	150			150	2 10
Roberts, James	360			360	5 04
Roarks, Reuben	119			119	1 66
Shafner, A. J.	200			200	2 80
Sprowles, James	300			300	4 20
Skaggs, J. B.	12			12	16
Shafner, W. J.	500		17	517	7 24
Shipp, A. Douglass, N. R.	225			225	3 16
Spratt, George E.	250		49	299	4 18
Spratt, G. E.	250			250	3 50
Saleman, Eli W. B.	300			300	4 20
Sprowles, Moses	187			187	2 62

Dist. No. 1 (cont'd).

	Land.	Town lots.	Personal.	Total.	Tax.
Skaggs, Martha	75			75	$1 06
Skaggs, William	90			90	1 26
Skaggs, B. F	75			75	1 06
Skaggs, Robert	130			130	1 82
Skaggs, Richard C	1069		762	1831	25 64
Skaggs, William D	38			38	54
Shofner, R. B	66			66	80
Sprowles, Bettie J	100			100	1 40
Skaggs, Thomas H	140			140	1 96
Skaggs, Mary	125			125	1 74
Skaggs, J. W	260		90	350	4 90
Skaggs, K. S	200			200	2 80
Spratt, J. F	480			480	6 72
Skaggs, Mack	50			50	70
Skaggs, W. H	750		26	776	10 86
Shofner, H. B	55			55	78
Shofner, R. H	625			625	8 76
					$577 34
29					
Forward					$577 34
Skaggs, H. H	60			60	84
Shofner, T. J	70			70	98
Sweeney, Thomas	50			50	70
Skaggs, Mary E	200			200	2 80
Shofner, David	180			180	2 52
Smith, Dr. R. H	40			40	56
Skaggs, Samuel	100			100	1 40
Spratt, R. D	100			100	1 40
Sprowles, J. F	100			100	1 40
Shofner, Lucy	85			85	1 20
Shofner, Caroline	138		9	147	2 06
Shipp, James	30			30	42
Skaggs, R. A., adm'r of Sallie Bell	110			110	1 54
Skaggs, W. J. (N. R.)	20			20	28
Thompson, George W	50			50	70
Thompson, Jack, Jr. (N. B.)	55			55	76
Thompson, Jack, Sr	137		29	166	2 32
Thompson, R. L	70			70	98
Thompson, James	220			220	3 08
Thompson, J. H	50			50	70
Thompson, W. J. (N. R.)	100			100	1 40
Thompson, W. J. (N. R.)	100			100	1 40
Underwood, Jno. L	25			25	35
Underwood, Hiram (Wolf)	200			200	2 80
Underwood, Laura	120			120	1 68
Underwood, W. W	5			5	08
Underwood, Jas. Henry	75			75	1 06
Underwood, Caroline	25			25	35
Underwood, Hiram C., adm'r of Caroline Underwood	200			200	2 80
					$615 90
30					
Forward					$615 90
Underwood, Thomas	400			400	5 60
Underwood, Rufus			96	96	1 34
Underwood, W. T	90			90	1 26
Underwood, Henry	90			90	1 26

Dist. No. 1 (cont'd).

	Land.	Town lots.	Personal.	Total.	Tax.
Underwood, L. J.	140			140	$1 96
Underwood, W. L.	300		22	322	4 50
Underwood, James	30			30	42
Underwood, Green B.	70		161	231	3 24
Underwood, H. H	100			100	1 40
Underwood, Lilburn	80			80	1 12
Underwood, Isabel	224			224	3 14
Warren, Martha J.	40			40	56
Warren, John C	54			54	76
Warren, R. A.	75			75	1 06
Webster, A. C	689		240	929	13 00
Whitfield, Susan	200			200	2 80
Warren, Hugh H.	75			75	1 06
Williams, Emma C.	504		72	576	8 06
Wood, J. Ep	250			250	3 50
Webster, Rhoda E	1505		145	1650	23 10
Webster, R. P.	160		252	412	5 76
Wight, Elizabeth	250			250	3 50
Warren, Wilson C	150			150	2 10
Wright, Rob't L.			50	50	70
Wilson, John S	525			525	7 36
Wright, J. W	300			300	4 20
Warren, R. T	154			154	2 16
Wright, Nancy A	25			25	36
					$721 18

31 District No. 2.

Arvin, Mariah	350			350	4 90
Arvin, Sylvester	350			350	4 90
Allen, Mary E.			16	16	22
Arvin, John S	92			92	1 20
Arvin, Thomas J.	120			120	1 68
Acre, Jesse R.	100			100	1 40
Allen, Talitha	150			150	2 10
Benson, Lester J. (N. R.)	231			231	3 24
Blankenship, Henry T	250			250	3 50
Brockman, Tandy	375			375	5 26
Bennett, Thomas G	306			306	4 28
Brockman, J. S	50			50	70
Bennett, Elizabeth C	300			300	4 20
Buchanan, G. W.	675		251	926	12 96
Brockman, Mary A	212			212	2 96
Campbell, Keziah	300			300	4 20
Collins, Jo Tol	1150		102	1252	17 52
Collins, William T			55	55	78
Creel, William T.			25	25	36
Cook, James F.	64			64	90
Colvin, Luke	465			465	6 52
Cave, Rob't.	120			120	1 68
Colvin, J. W., Sr.	1000			1000	14 00
Colvin, J. W., Jr.	150			150	2 10
Colvin, George			25	25	36
Chaney, Rebecca F	355			355	4 98
Colvin, Mark	267		28	295	4 14
Colvin, Hardin	200		65	265	3 72
Caulk, E. L.	100			100	1 40

Dist. No. 2 (cont'd).

	Land.	Town lots.	Personal.	Total.	Tax.
Colvin, John J	88			88	$1 24
Colvin, H. C			55	55	78
					118 18
32					
Forward					$118 18
Colvin, J. Samuel	225			225	3 16
Colvin, James	488		600	1088	15 24
Creel, James E	1200		232	1432	20 04
Colvin, Rob't J	190		456	646	9 04
Cowherd, R. L			71	71	1 00
Cowherd, Henry C			50	50	70
Cowherd, Samuel H			115	115	1 62
Cowherd, Ben F			85	85	1 20
Colvin, Jackson	272			272	3 80
Caulk, D. D	90			90	1 26
Caulk, Jno. H	182		9	191	2 68
Caulk, Josie W	105			105	1 48
Caulk, William R	219		10	229	3 20
Cowherd, Jas. C			175	175	2 46
Colvin, Aaron E	250			250	3 50
Caulk, Charles W			149	149	2 08
Colvin, Thomas			20	20	28
Collins, R. S	100			100	1 40
Durham, W. W	800		967	1767	24 74
Deener, Jno. W			52	52	72
Deneer, James W	60			60	84
Deener, Wm. T	300		50	350	4 90
Durham Lou. B	84			84	1 18
Durham, Lloyd H	300			300	4 20
Durham, J. S	210			210	2 94
Dye, W. J	300			300	4 20
Druin, W. H	530		175	705	9 88
Durham, J. E., Sr	1330		601	1931	27 04
Davis, Henry	450			450	6 30
					$279 26
33					
Forward					279 26
Durham, Geo. H			50	50	70
Donnelly, Henry	250			250	3 50
Durham Bros			500	500	7 00
Durham, R. H		100	10	110	1 54
Echker, Sherman			50	50	70
Elder, J. J	400			400	5 60
Farris, M. N	250			250	3 50
French, R. B	160			160	2 24
Farmer, Joseph	208			208	2 92
Fawcett, W. G	500			500	7 00
Farmer, Henry M	66			66	92
Farmer, James R	300			300	4 20
Ferrill, Josh. A	100			100	1 40
French, M. D	153			153	2 14
Farris, F. M	183			183	2 56
Feather, Wm. M	468			468	6 56
Feather, Wm. G	152			152	2 12
Feather, R. S	818		290	1108	15 52
Farris, Eliza B	279			279	3 90
Feather, John			77	77	1 08

Dist. No. 2 (cont'd).

	Land.	Town lots.	Personal.	Total.	Tax.
Feather, A. H.			100	100	$1 40
Feather, R. J.	786		90	876	12 26
Ferrell, Lindsey M.	60			60	84
Graves, W. W. (N. R.)	700			700	9 80
Godby, W. R.	50			50	70
Graham, Jno. E.	335		552	887	12 42
Graham, Elijah	250			250	3 50
Gaddie, Margaret A.	800		5	805	11 28
Grayham, Rob't	303			303	4 24
Gabeheart, Ignatius	240			240	3 36
					$414 16
34					
Forward					$414 16
Gribling, A. F.	275			275	3 86
Graham, Sam'l E	30			30	42
Gillam, Charles T.	11			11	16
Gadie, Wm. B	700			700	9 80
Gaddie, Aylett	1272		23	1295	18 14
Graham, Thos. G.			50	50	70
Graves, C. J.	250			250	3 50
Gaddie, S. A. & L. T.	2692		164	2856	39 98
Gaddie, B. S.			35	35	48
Hall, Martha C.	350			350	4 80
Hall, Annie S.		100	115	215	3 02
Hegspeth, Samuel	314			314	4 40
Hill, Jas. H	200			200	2 80
Hunt, J. B.	50			50	70
Hudson, E. R.	10			10	14
Harris, Rhoda E	300		231	531	7 44
Hedgspeth, W. H.			20	20	28
Hoglan, Mattie M.	400			400	5 60
Hedspeth, J. W.	636		69	705	9 88
Hubbard, Danuel	365			365	5 12
Hash, Thomas	275			275	3 86
Hash, Arch	350			350	4 90
Hedgspeth, Jas. H	259			259	3 62
Handley, Jno. R.	150			150	2 10
Hill, Martha A	1000			1000	14 00
Hill, Wm. B.	262		320	582	8 14
Hunt, Emma J.	80			80	1 12
Hubbard, Geo.			15	15	22
Hunt, Jas. T.	40			40	56
					$573 90
35					
Bro't forward					$573 90
Hedgspeth, Jos. S.	500		54	554	7 76
Harmon, Z. H	70			70	98
Hash, Jas	100			100	1 40
Hill, C. M.	300			300	4 20
Hardesty, Geo. R.	12			12	16
Hardesty, James	300		1250	1550	20 70
Hedgspeth, H. S.	962		487	1449	20 28
Hedgspeth, R. C.			371	371	5 20
Handley, Mary L.	150			150	2 10
Hall, Geo. F.	250			250	3 50
Hash, John	159			159	2 22
Hord, W. W.	52			52	72

Dist. No. 2 (cont'd).

	Land.	Town lots.	Personal.	Total.	Tax.
Jones, W. S	327			327	$4 58
Jones, W. S., adm'r of E. C. Allen	953		321	1274	17 84
Jarboe, Thos. S	50			50	70
Jarboe, Henry F	200			200	2 80
Jones, J. W., Sr	60			60	84
Jones, Wm. R		100		100	1 40
Kirtley, Ed. H	898			898	12 58
Kendall, Lee	190			190	2 66
Kerr, Armstorng	100			100	1 40
Knapp, Adam	200			200	2 80
Knapp, Ben	262		55	317	4 44
Kirtley, Mrs. S. M			320	320	4 48
Kopp, Anthony	205			205	2 88
Kerr, Rob't L	318		53	371	5 20
Little, Jas. T	326			326	4 56
Lavigne, Joseph	738		76	814	11 40
McFarland, Jo. T	600		110	710	9 94
Morgan, Josie (N. R.)	100			100	1 40
					$735 02
36					
Bro't forward					$735 02
Miskell, Green	245			245	3 44
McAlpine, Oscar	540		28	568	7 96
McFarland, J. C	1220		986	2206	30 88
Mardis, Thos. L	150			150	2 10
Mardis, W. T	650		60	710	9 94
Mardis, W. T. & T. L., adm'r	460			460	6 44
Mardis, Jo. T	40			40	56
Mardis, Sam'l M	329			329	4 60
Milby, Ben. M	250			250	3 50
Mardis, Mary S	225		138	363	5 08
Miskell, Lafe	90			90	1 26
Mardis, Thos	288		70	358	5 02
Mardis, E. Thomas	112			112	1 56
Mardis, Robert	300			300	3 20
McFarland, Jno. D	475		70	545	7 64
Morris, Bettie and Lucy	105			105	1 48
Morris, Luther	50			50	70
Mardis, Annie	141			141	1 98
Miskell, Wm	150			150	2 10
Maupin, C. L	224			224	3 42
Mardis, Lucinda	460			460	6 44
McNear, Emily	120			120	1 68
Mardis, W. W	148			148	2 08
Moore, R. L	335			335	4 70
Maupin, W. T	252			252	3 52
Morris, Priscilla	280			280	3 92
Martin, A. T			81	81	1 14
Martin, J. W	835			835	11 70
Maupin, E. M	180			180	2 52
Nall, W. H	150	200		350	4 90
Netherland, Geo. C	2410		208	2618	36 66
Newcomb, Henry	50			50	70
					$917 84

Dist. No. 2 (cont'd).

	Land.	Town lots.	Personal.	Total.	Tax.
37 Forward					$917 84
Nelson, Jno. T.	225			225	3 16
Newton, Annie	100			100	1 40
Newcomb, Geo. R.			20	20	28
Newcomb, W. T.	55			55	78
Overstreet, J. Leslie	250		60	310	4 34
Overstreet, W. H	500			500	7 00
Partott, Elizabeth	66			66	92
Parrott, Lloyd	38			38	54
Parrott, Lafe	30			30	42
Parrott, Wm	350			350	4 90
Parrott, Martha A	110			110	1 54
Price, R. C.	35			35	50
Philpott, Heirs	100			100	1 40
Patterson, W. T. (N. R.)	300			300	4 20
Parrott, J. W			45	45	64
Phillips, Jas. M	38			38	54
Parrott, Jno. N	50			50	70
Parrott, Geo. W	335			335	4 70
Parrott, Thos. H	260			260	3 64
Phillips, Lewis J	1700		341	2041	28 58
Phillips, Geo			140	140	1 96
Phillips, Sarah E.	600			600	8 40
Parrott, Rob't C.	35			35	50
Parrott, Chas. M.	39			39	54
Phillips, Green	24			24	34
Parrott, C. M., Sr.	200			200	2 80
Philpott, Jno. H.	400			400	5 60
Romine, Emily	250			250	3 50
Robinson, W. W.	275			275	3 86
					$1015 52
38 Bro't forward					$1015 52
Russell, Thurman	60			60	84
Romine, Andy M.			65	65	92
Rice, J. J.	264			264	3 70
Richeson, Jas. C.	192			192	2 68
Rafferty, R. S.	284			284	3 98
Russell, V. H.			20	20	28
Riggs, G. F.	54			54	76
Richeson, Jno. R	226			226	3 16
Ratliff, Wm. E			25	25	36
Riggs, Lee	25			25	36
Romine, David W.	90			90	1 26
Richson, T. E.	960		167	1127	15 78
Ramsay, L. B.	200			200	2 80
Ramsay, Jas. A.	480	100		580	8 12
Rives, H. W., ex'r of C. S. Hill	500			500	7 00
Ramsay, Mrs. E. H.		50		50	70
Spilman, Mrs. Mattie E.	300			300	4 20
Sanders, E. T.	350			350	4 90
Short, W. T.	160			160	2 24
Short, Jas. H.	120			120	1 68
Stiles, Clelland	748		40	488	11 04
Shipp, Geo. W.	80			80	1 12
Smith, R. H.	150			150	2 10
Sanders, Jno. C.	150			150	2 10
Sullivan, W. G. & U. H.	960			960	13 44

Dist. No. 2 (cont'd).

	Land.	Town lots.	Personal.	Total.	Tax.
Sullivan, U. H.	160			160	$2 24
Spratt, T. J.	815			815	11 42
Sullivan, Jno. W.	420		127	548	7 68
Spratt, W. H.			60	60	84
Sympson, Sam'l.	420		146	566	7 92
Sympson, Geo. H.	700		10	710	9 94
					$1151 08
39					
Forward					$1151 08
Sanders, Harriett	90			90	1 26
Sapp, Fannie A.	50			50	70
Smith, B. S.	175			175	2 46
Stiles, Elias	435			435	6 10
Sanders, C. C.	725		103	828	11 60
Sanders, Jack H.			25	25	34
Sanders, Mrs. S. M. (N. R.)	582			582	8 14
Shipp, Samuel	550		53	603	8 44
Skaggs, David	138			138	1 94
Turner, C. B	200			200	2 80
Tharp, J. M. (N. R.)	200			200	2 80
Thomas, Wm.	300			300	4 20
Turner, Amanda E.	500			500	7 00
Turner, W. E.	1020		170	1190	16 66
Turner, Thos. M.	400			400	5 60
Tandy, Jno. W.	300			300	4 20
Thompson, John	75			75	1 06
Tandy, W. S.	150			150	2 10
Thompson, Jas.	100			100	1 40
Underwood, Mariah J.	20			20	28
Underwood, Frank	286			286	4 00
Warner, Aylett	50			50	70
White, Clay A.	1604			1604	22 46
Wathen, Thos.	282			282	3 94
Wade, Jo. H.	148		165	313	4 38
Wade, R. T.	738		160	898	12 58
Wade, Mrs. Ann M.	755			755	10 58
Wade, D. S.	530		40	570	7 98
Wilson, Jno. L.	540		4	544	7 62
Wilson, J. E.			76	76	1 06
Wilson, W. A.			63	63	88
					$1316 34
40					
Bro't forward					$1316 34
Whitlock, Woodson (N. R.)	50			50	70
Whitlock, Geo. R.	30			30	42
Warner, Robert	200			200	2 80
Waters, Jennie	180			180	2 52
Winlock, Edwin	1750		225	1975	27 66
Winston, Lewis' heirs	630			630	8 82
Warner, Jas.	141			141	1 98
Wise, Richard M.	80			80	1 12
Wade, Oscar	451		97	548	7 68
Wray, Chas. D.	330		6	336	4 70
Wright, W. G.	264			264	3 70
Young, E. L			67	67	94
Young, Jo. M.			5	767	10 74
Young, A. J.		150	825	975	13 66

Dist. No. 2 (Cont'd).

	Land.	Town lots.	Personal.	Total.	Tax.
Young, Rob't F.			55	55	78
Young, Jno. R.	500			500	7 00
Yates, Sylvester	40			40	56
					$1412 12

District No. 3.

Atkinson, J. L.		1650		1650	23 10
Allen, W. T.	178			178	2 50
Alexander, Jno. Q.		2050	80	2130	29 82
Avery, Mrs. A. D.	240			240	3 36
Armstrong, Jno. E.	600		85	685	9 60
Bank of Campbellsville			1000	1000	14 00
Burress, Caroline	425			425	5 96
Borders, Mrs. L. A.		250		250	3 50
Buchanan & Sanders			1500	1500	21 00
Buchanan, T. W.		900	16	916	12 82
Buchanan, Virgie M.		1400		1400	19 60
					$145 26
41					
Bro't forward					$145 26
Blakey, Sarah J.	300			300	4 20
Burress, Jas. H.	250			250	3 50
Bright, Joseph			8	8	12
Buchanan, J. Caldwell	375		100	475	6 66
Biggs			5	5	06
Beams, Thos. L.	150			150	2 10
Bailey, F. B.			25	25	36
Bumgarner, David	200			200	2 80
Bailey, Jas. R.	1106			1106	15 48
Bland, W. H.	400			400	5 60
Baier, Wm.	640			640	8 96
Biggs, Cluff S.	125			125	1 76
Burnheizel, Jacob	150			150	2 10
Bailey, B. V.	125			125	1 76
Bottoms, Chas. A.	450			450	6 30
Bomar, Sophie		400		400	5 60
Black, Mrs. Callie		500		500	7 00
Baker, Mary M.		325		325	4 56
Blakey, Isaac		900	100	1000	14 00
Bain, E. R.	700			700	9 80
Buchanan, Geo. H. (N. R.)		1300		1300	18 20
Blakey, Neyha	600			600	8 40
Barbee, Mrs. M. E.		950		950	13 20
Bryant, E. H.		600	5	605	8 48
Bass, Pam'l R.	200	2500	910	3610	50 54
Bell, Jas.	740		40	780	10 92
Buchanan, J. B.		866	10	876	12 26
Blakey, W. T.	175			175	2 46
Blount, Mary A.		350		350	5 90
Billman, Jno. G.	545			545	7 64
Burress, Tilden			30	30	42
					$386 40

Dist. No. 3 (con'd).

	Land.	Town lots.	Personal.	Total.	Tax.
42 Forward					$386 40
Burress, W. X	600		100	700	9 80
Blakey, Eliza J	200		20	220	3 08
Blakey, Felix			40	40	56
Blatter, Jno	700			700	9 80
Brown, Frank	400			400	5 60
Bright, Geo. W	50			50	70
Clark, W. S	1000			1000	14 00
Chandler, Wm. A	100		500	600	8 40
Cook, W. H	250			250	3 50
Cook, R. D			65	65	92
Campbell, Wm. F	300		85	385	5 40
Campbell, Jas. A	600		5	605	8 48
Crouch, Ed	240			240	3 36
Crouch, Jo	250			250	3 50
Crouch, Thos. A	400		130	530	7 42
Chandler, Emma		1050		1050	14 70
Canada, Mitchell A	100			100	1 40
Cook, Thos. T	100			100	1 40
Chandler, W. T		1500	830	2330	32 62
Same, agent, Lucy Chandler			1440	1440	20 16
Chandler, Mrs. Jno. M		600		600	8 40
Chandler, Eliza J		1700	365	2065	28 92
Coaklet, J. M	700	875	180	1755	24 58
Same & Son			500	500	7 00
Coakley, Anna		250		250	3 50
Cloyd, Mariah F	600		300	900	12 60
Cave, Emmet			25	25	36
Cowherd, Geo. R. (N. R.)	1056			1056	14 78
Campbell, Martin D	560			560	7 84
Cox, Mrs. Mattie A		500		500	7 00
Cowherd, Jno. R			270	270	3 78
					$659 96
43 Forward					$659 96
Campbell, Jas. M	69			69	98
Cobb, W. D		500	158	658	9 22
Childers, Lindsay	177		137	314	4 40
Cowherd, W. B	400			400	5 60
Chandoin, Geo. A	160		90	250	3 50
Cloyd, Wm. T	304			304	4 26
Campbell, Luther H	1350		173	1523	21 32
Cowhder, Rob't C	1520			1520	21 28
Claycomb, Thos			505	505	7 08
Campbell, Thaddeus			45	45	64
Cowherd, R. A	3320		1697	5017	70 24
Cowherd, W. X			130	130	1 82
Cowherd, Geo. A	3844		1107	4951	69 32
Crowser, Ed	50			50	70
Cave, Green	250			250	3 50
Crowser, Fred	300			300	4 20
Cassel, Phillip	500		167	667	9 34
Claycomb, Conrad	500		95	595	8 34
Coslow, Calvin	130			130	1 82
Chapman, R. H	300		39	339	4 74
Cook, Annie M	150			150	2 10
Cook, Jos. H	150			150	2 10
Cook, Lavina		200		200	2 80

Dist. No. 3 (con'd).

	Land.	Town lots.	Personal.	Total.	Tax.
Coppock, Jno. (N. R.)	1800		228	2028	$28 40
Cave, Mary H.	750	1110	1000	2860	40 04
Chaney, W. M.		100		100	1 40
Campbell, Malinda J.	150	600		750	10 50
Campbell, Rob't T			265	265	3 72
Chandler, J. Hugh			115	115	1 62
Chandler, Jno. H. ag't Gaddie's heirs	500			500	7 00
					$1011 94
44					
Forward					$1011 94
Cox, Mary		300		300	4 20
Coakley, E. M	500	1950	120	2570	35 98
Coakley & Durham			2000	2000	28 00
Coakley, Chas. I			30	30	42
Coaklet, Mrs. M. E.		850		850	11 90
Chandler & Spear			250	250	3 50
Cloyd, J. W.	150	2075	1735	3960	55 44
Cheek, J. D.		150		150	2 10
Clark, Florence		650		650	9 10
Cheek, Sallie M.		300		300	4 20
Collins, Mary E.		950		950	13 30
Collins, Maggie		65		65	92
Casper, G. N.	290			290	4 06
Cave, James	160			160	2 24
Craig, Joseph	300			300	4 20
Cave, Wm. F.	225			225	3 16
Culp, Andrew S.			590	590	8 26
Cave, Rezin.	96			96	1 34
Chandler, Mrs. E. F. (N. R.)		400		400	5 60
Chandler, J. Morgan		400	347	747	10 26
Colton, Mrs. E. A.		500		500	7 00
Campbell, Ben W.	1150		158	1308	18 32
Campbell, R. C	300			300	4 20
Carson, Mary G.		350		350	4 90
Campbell, Jas. J	250		1233	1483	20 76
Campbell, Abraham	800		44	844	11 82
Douglass, C. W. (N. R.)	198			198	2 78
Davidson, Jno. V., Sr	300		300	600	8 40
Davidson, Jno. V., Jr	415			415	5 82
Duffey, J. J.	30			30	42
Davidson, Benj.	250			250	3 50
					$1308 04
45					
Forward					$1308 04
Davidson, Benj., ag't for Reuben Newenswander	150			150	2 10
Dooly, Wm. B.	600		15	615	8 62
Durrett, Geo. W.	2260		1000	3260	45 64
Durrett, Mary	994		400	1394	19 52
Durham, Jas. C.		400		400	5 60
Deweese, Geo. W.	650		242	892	12 48
Durham, Lizzie.		300		300	4 20
Davis, Thos. W.	600	700	120	1420	19 88
Decker, W. J.	175			175	2 46
Dix, Thomas	125			125	1 76
Durham Jo. C.			400	400	5 60

Dist. No. 3 (con'd).

	Land.	Town lots.	Personal.	Total.	Tax.
Davis, R. H.	100			100	$1 40
David, Lizzie & Nannie		700		700	9 80
Davis, J. E. adm. of L. J. Davis		800		800	11 20
Durham, Mystic		250		250	3 50
Davis Hattie (N. R.)		200		200	2 80
Durham, S. L.	525			525	7 36
Edrington, J. L. (N. R)	745			745	10 44
Edrington, G. M	864		57	921	12 90
Edwards, Jas. W	2474		695	3170	44 38
Edwards, Andy D.			4	4	06
Edwards, W. W	900		89	989	13 84
Edwards, Sallie		500		500	7 00
Edwards, D. B.		500		500	7 00
Edwards, J. D.	700		316	1016	14 22
Edwards, Lou J. (N. R.)	100			100	1 40
Ellis, W. M.	300		10	310	4 34
Ferrell & Wooley			9600	9600	134 40
Farris, Sam'l R.	850		240	1090	15 26
Fisher, T. T	700		66	766	10 72
					$1747 92
46					
Forward					$1747 92
Fisher & Fisher			1000	1000	14 00
Fisher, Mary F	82			82	1 14
Fisher, Elijah	180			180	2 52
Fiarburn, Wm. H	448		98	546	7 64
Fuller, Mrs. B. A.	728		107	835	11 70
Fleece, C. R.		250	358	608	8 52
Flora, G. C		800	905	1705	23 88
Fleece, Nannie		500		500	7 00
Frogg, Wm	25			25	36
Fawcett, R. W. & T. C	500		100	600	8 40
Greene, Thos. E		800	60	860	12 04
Gill, Wm. I.	15			15	22
Goodin, Jas. T	300			300	4 20
Gilmore, J. I.	1200		773	1973	27 62
Green, E. L.		400		400	5 60
Green, Mary M.		450		450	6 30
Gowdy, J. E.		1430	4240	5670	79 38
Gowdy, A B		1050	5	1055	14 78
Gowdy, D. W., g'd'n Frank & Willis Trine	500			500	7 00
Same, g'd'n Lemie Carter			500	500	7 00
" Annie Carter			500	500	7 00
" Lucy Carter			500	500	7 00
" Dan'l Hatcher			250	250	3 50
" Hattie Hatcher			250	250	3 50
" Mattie Hatcher			250	250	3 50
" Ex. Sallie Chandler			2000	2000	28 00
" g'd'n Maggie & Robbie Chandler	500	900		1400	19 60
" g'd'n R. H. Parrott			450	450	6 30
" H. S. Parrott			350	350	4 90
					$2080 52

3792

Dist. No. 3 (con'd).

	Land.	Town lots.	Personal.	Total.	Tax.
47 Forward					$2080 52
Gowdy, G. W., com. Nancy J. Price			650	650	9 10
Gilpin, J. T.	1250			1250	17 50
Gwinn, J. W	350	500		850	11 90
Gilmore, Ira			30	30	42
Goode, McC	1000		10	1010	14 14
Geo. James, ag't for children		500		500	7 00
Gregory, F. G.	750			750	10 50
Gowdy, G. H., pres't of M. C. & T. P. Co			5000	5000	70 00
Graves, Garnett		600		600	8 40
Hoskins & Russell			300	300	4 20
Hoskins, C. R	1500		80	1580	22 12
Hord, C. D.	300		93	393	5 50
Howk, W. O	500			500	7 00
Hoskins, Creed		3000	365	3365	47 12
Hobson, William		400		400	5 60
Harding, Jane		300		300	4 20
Hackley, Rob't J	600			600	8 40
Hord, H. C	700		40	740	10 36
Harding, Sam'l A.	500			500	7 00
Hill, Edward			40	40	56
Hill, Wm. S		400		400	5 60
Hord, S. R			237	237	3 32
Hord, Clayton			15	15	22
Heizer, M. L.	100			100	1 40
Hinton, Jas.	50			50	70
Hay, H. H	100			100	1 40
Hay, C. A	143			143	2 00
Hoskins, Mrs. F. E.		1800		1800	25 20
Hoskins, T. E.		1450	1950	3390	47 46
Hoskins, W. E.		200	10	210	2 94
					$2441 78
48 Forward					$2441 78
Hubbard, Sallie	1600	950		2550	35 70
Hatcher, Mrs. Bettie		800		800	11 20
Hastings, L. R. (N. R.)	400			400	5 60
Hill & Van Hay			375	375	5 26
Hill, Rob't L	100		650	750	10 50
Hord, Rich. F		350		350	4 90
Hakley, S. B.			15	15	22
Hill, A. C.			150	150	2 10
Hudson, G. W	875	300	270	1445	20 24
Horton, W. L.	200			200	2 80
Hord, Geo. Whitt	450		375	825	11 56
Hazard, E. C.	500			500	7 00
Hobron, Chas. M		800	15	815	11 42
Hoskins, Ben	400		75	475	6 66
Harding, Keziah	800		114	914	12 80
Harding, Abraham	1200			1200	16 80
Hobson, N. & Bro			500	500	7 00
Hord, Jno. R.	240			240	3 36
Ingram, W. W.	1992		633	2625	36 76
Johnston, Jno. T	240			240	3 36
Jarboe, Mrs. Henrietta	480	250		730	10 22
Jones, Wm. C.		565		565	7 92

Dist. No. 3 (cont'd).

	Land.	Town lots.	Personal.	Total.	Tax.
Jeter, Annue P		300		300	$4 20
Jeter, Ann E.	500			500	7 00
Jeter, R. E		800		800	11 20
Jablow, Isaac		2000	1770	3770	52 78
Johnson, Mary G			250	250	3 50
Johnson, Mrs. M. B., dec'd		500		500	7 00
Jackson, W M		1000		1000	14 00
Jones, Elizabeth	275			275	3 86
Jarboe, R. W.	238			238	3 34
					$2782 04
49					
Forward					$2782 04
Kirtley, J. Davis	165			165	2 32
Kessler, B. T. & J. H	1078		45	1123	15 72
Kuntz, Elizabeth	300			300	4 20
Konper, Mrs. A. S.		300		300	4 20
Kerr, J. Woodson	1000		171	1171	16 40
Kerr, S. F.		700		700	9 80
Kerr, Jas. W		400		400	5 60
Kent, Calvin	400			400	5 60
Lett, Sarah	550	400		950	13 30
Leet, Jno	800			800	11 20
Lynn, W. R.		480	120	600	8 40
Loving, J. W.			1610	1611	22 54
Lindley, J. A	1000			1000	14 00
Lane, Jas. E	142			142	1 98
Lebo, A. W	750		75	825	11 56
Lamme, Darius	15	200		215	3 02
Lindley, Mrs. Lou		450		450	6 30
Long, Ray	300			300	4 20
Lee, George	50		335	385	5 40
Long, Simon	250			250	3 50
Lyon, Ben F	600		270	870	12 18
Lewis, Joseph	600		55	655	9 18
Lebanon Lumber Co.	480		1200	1680	23 52
Latimer, Lee	145		50	195	2 74
Miller, J. W.			25	25	36
Montague, R. S.		840		840	11 76
Marshall, Mrs. E. B.	500			500	7 00
McGinnins, Charles		100		100	1 40
Matthews, Mrs. Lou		300		300	4 20
					$3023 62
50					
Forward					$3023 62
Mitchell, D. G.	945		25	970	13 58
Murray, G. V		493	130	623	8 72
Same, adm'r G. V. Murray, Sr.			1000	1000	14 00
Murray, Nannie W		1000		1000	14 00
Moss, Geo. T.	500			500	7 00
Marrs, Jas. W.			75	75	1 06
Marrs, Lucy J	800			800	11 20
Mouring, Jas. W	1140		150	1290	18 06
Marshall, R. W.			50	50	70
Moss, S. T.			220	220	3 08
McFerson, J. W			225	225	3 16
Marshall, W C			30	30	42
Moss, J. R.			455	455	6 38

Dist. No. 3 (cont'd).

	Land.	Town lots.	Personal.	Total.	Tax.
Montz, Frank R.	1700		210	1910	$26 74
Marshall, David H.	560			560	7 84
Marr, W. G.	125			125	1 76
Moore, Jas. R.	300			300	4 20
McWhorter, C. R. (N. R.)		150		150	2 10
Matthews, N. H.	600			600	8 40
McElroy, Mrs. Diema		200		200	2 80
McFerson, A. H.	3200		460	3660	51 24
Moore & Marshall			1650	1650	23 10
Moore, Mrs. Mag		1750	1500	3250	45 50
Moore, D. B.		100	650	750	10 50
McMahan, Annie	500			500	7 00
Marshall, A. H.		700		700	9 80
Meader, W. I.	125	800		925	12 96
Moss, Jno. T.		400		400	5 60
Mardis, Francis	100			100	1 40
Mardis, Luther R.	50			50	70
					$3346 62
51					
Forward					$3346 62
Merkley, J. J.	1500	400	315	2215	31 02
Mobley, Wm.	200			200	2 80
Merkley, W. E.		4500	50	4550	63 70
Murrah, Jas. J.	100			100	1 40
Miller, Harriett S.	400			400	5 60
McKenty, Wm. J.	200			200	2 80
Marshall, Rob't & Wm	720		205	925	12 96
McMahanan, Annie	515			515	7 22
Marrs, Nancy		400		400	5 60
Miller, David J		350		350	4 90
Miller, Ira W.			30	30	42
Newcomb, Mrs. S. B.	120			120	1 68
Newton, W. W.			50	50	70
Newton Bros	550	3000		3550	49 70
Newton, J. H.	45			45	64
Newton, J. T		600		600	8 40
Netherland, W. T.	132			132	1 84
Nall, C. G.	444			444	6 24
Nall, T. L.	425		45	470	6 58
Newcomb, I. J	200			200	2 80
Odewalt, Jacob		1000	965	1965	27 52
Penrod, Wm. H.	425		15	440	6 16
Price, Samuel	400			400	5 60
Phillips, N. B.			140	140	1 96
Phillips, Ruth P.	600		40	640	8 96
Patteson, Mrs. Nora E.		1200		1200	16 80
Patteson, Chas	350		279	629	8 80
Puyear, Mary A.	500		200	700	9 80
Perry, Claude R.	2000		392	2392	33 48
Perry, Edgar	450		190	640	8 96
					$3691 66
52					
Forward					$3691 66
Phillips, Rob't L.	800		223	1023	14 32
Peterson, Mary L.	92			92	1 28
Phillips, Geo.	600		95	695	9 74
Page, W. A.	250			250	3 50

Dist. No. 3 (cont'd).

	Land.	Town lots.	Personal.	Total.	Tax.
Parrott, Bettie A		350		350	$4 90
Parrott, C. Y	1990		199	2189	30 64
Parrott, Chas., Jr			110	110	1 54
Phillips, Lizzie B		150		150	2 10
Piles, Chas	200			200	2 80
Redman, S. W. (N. R.)	770			770	10 78
Romine, Ben F	500			500	7 00
Romine, W. D	317			317	4 44
Rice, Marvin		900		900	12 60
Rice, H. M			790	790	11 06
Robinson, H. S	500	565	35	1110	15 40
Same, g'd'n Bruce Prewitt			275	275	3 86
Robinson, P. S., adm'r J. R. Robinson	2650		165	2815	39 42
Ramsay, W. H	600		92	692	9 68
Roots, W. T	500			500	7 00
Roots, Wm	300			300	4 20
Robinson, J. H	500			500	7 00
Rafferty, Jno. M	969			969	13 56
Rakestraw, B. F	640		376	1016	14 22
Ramsey, Geo	1200			1200	16 18
Ramsey, C. W	800			800	11 20
Ramsey, Frank	480			480	6 72
Rice, Emily J	300			300	4 20
Rodgers, E. C	100		12	112	1 56
Rafferty, T. C	200			200	2 80
Rice, J. R	280		70	350	4 90
Robinson, Jos. E			45	45	64
					$3970 90
53					
Forward					$3970 90
Rivers, R. P		600		600	8 40
Robinson, Jo S			80	80	1 12
Rafferty, Eli	50			50	70
Rafferty, Eli P	40			40	56
Roberts, Jno. L	150			150	2 10
Roberts, Jo T	500			500	7 00
Roberts, James	100			100	1 40
Robinson, C. A	800		20	820	11 48
Russell, Jno. H	150			150	2 10
Smith, Geo. A			35	35	50
Smith, Wiley			25	25	36
Skeen, Sarah E		250		250	3 50
Sidebottom, Lizzie		400		400	5 60
Standard Oil Co., by A. H. Marshall		350	125	475	6 66
Scott, B. B			60	60	84
Same & H. S. Robinson	600			600	8 40
Sharp, Wm		300	1025	1325	18 56
Schnieb, Sarah	528			528	7 40
Schneib, Jas	58			58	82
Smith, Owsley	400			400	5 60
Smith, Tyler			20	20	28
Smith, S. H	400		595	995	13 94
Smith, Mrs. Bell C	500	1000		1500	21 00
Smith, J. R		75	2035	2110	29 54
Sandusky, J. R			97	97	1 36
Skeer, Mike	520			520	7 28
Sanders, Jas. R			80	80	1 12

Dist. No. 3 (cont'd).

	Land.	Town lots.	Personal.	Total.	Tax.
Sanders, Minnie L.	780			780	$10 92
Smith, J. M.	300			300	4 20
Stacker, G. J.			53	53	74
					$4154 38
54					
Forward					$4154 38
Stacker, Godfry	1000		138	1138	15 64
Smith, J. S.	290			290	4 06
Smith, Lucien O.	30			30	42
Sanders, E. M.	180			180	2 52
Sanders, D. P.	180			180	2 52
Spurling, Eli	30			30	42
Smith, Herbert	50		180	230	3 22
Shipp, Lafe			30	30	42
Sanders, E. W.	275			275	3 86
Shipp, Lee			15	15	22
Smith, Ed L.	248			248	3 48
Shipp, J. H.	251			251	3 52
Spurling, Henson	200		72	272	3 80
Sanders, J. H.			30	30	42
Sanders, Lafe	200		64	264	3 70
Shipp, Jas. A.	200		100	300	4 20
Smith, J. E.			25	25	36
Smith, Geo. D	300		195	495	6 94
Sharp, H. O. (N. R.)	100			100	1 40
Smith, Jo A.	800		9	809	11 32
Sanders, Wm. B.		400		400	5 60
Sanders, Geo. A. C	115			115	1 62
Stults, J. S.		2950		2950	41 30
Same, adm. F. J. Hieston	2450	2150	120	4720	66 08
Spurling, M. L.		500	840	1340	18 76
Sanders, Richard.		500		500	7 00
Sanders, Maggie		400		455	6 38
Smith, Luther B.	2150	1425	525	4100	57 40
Smith & Flora			1193	1193	16 70
Speer, W. H.	350			350	4 90
					$4452 86
55					
Forward					$4452 86
Sanders, Mrs. A. M.	1600		27	1627	22 78
Saxton, Wm. P.	360		15	375	5 26
Shipp, Geo. W.	390			390	5 46
Smith, Luther D.	485			485	6 80
Smith, Mary L.	400			400	5 60
Smith, Frank R.			40	40	56
Stone, W. E.	200		104	304	4 26
Smith, W. E.			60	60	84
Stone, Hallie E.	344			344	4 82
Smith, Jno. T.			90	90	1 26
Smith, J. H.	298			298	4 18
Smith, Alex	375			375	5 26
Speer, C. H. & J. R.	650		65	715	10 02
Speer, Jas. R.			60	60	84
Speer, C. H.			55	55	78
Steger, Jno. D.	650		17	667	9 34
The Campbellsville Lumber Co.	1000	850	6990	8840	123 76
Taylor & Crate, by W. E. Wallen			1600	1600	22 40

Dist. No. 3 (cont'd).

	Land.	Town lots.	Personal.	Total.	Tax.
The Crille Telephone Co			60	60	$0 84
Tripplett, James		400		400	5 60
Thompson, Cattie		450		450	6 30
Same, g'd'n Earle Thompson			2000	2000	28 00
Timmons, W. W			30	30	42
Thompson, Wm. (N. R.)	100			100	1 40
Turner, J. N., g'd'n of H. P. Turner	300		500	800	11 20
Same, ag't Harriett Lively		300		300	4 20
Turner, H. R		100	360	460	6 44
Turner, H. R. & Bro			1500	1500	21 00
					$4772 48
56					
Forward					$4772 48
Tandy, J. D	960	850		1810	25 34
Thompson, Margie	50			50	70
Taylor, L. H	1000			1000	14 00
Tandy, Thos			15	15	22
Tharp, W. E	92			92	1 28
Taylor, Mrs. L. J	2200			2200	30 80
Turpin, Wm. S., Jr			159	159	2 22
Taylor, J. L		150		150	2 10
Taylor, T. W	1200		198	1398	19 58
Taylor, Flora B	500			500	7 00
Underwood, W. T		600	155	755	10 58
Underwood, Mary		75		75	1 06
Underwood, J. R	100			100	1 40
Underwood, Malinda A	200			200	2 80
Vancleave, Geo. W	1280		505	1785	25 00
Van Hoy, S. S			85	85	1 20
Vancleave, J. C	324			324	4 54
Wayland, Maggie	65			65	92
Wells, T. W	400			400	5 60
Wayne, J. W	360			360	5 04
West, T. J		200		200	2 80
Wooldrige, Mattie N			50	50	70
Wooldridge, E. P	140			140	1 96
Wright, Chas. W		1400	2470	3870	54 18
Same, ag't W. D. Reeding	300			300	4 20
Wood, J. M	600	2210	382	3192	44 68
Wilkerson, Henry H		725	235	960	13 44
Wright, J. S			155	155	2 18
Webster, Ed. F	405			405	5 68
Willock, Sallie	300			300	4 20
					$5067 88
57					
Forward					$5067 88
Wooldridge, W. E	232			232	3 24
Willock, Jo		1500	365	1865	26 12
Williams, Jas		400		400	5 60
Winston, Mary J	120			120	1 68
Wooldridge, Jas. H	160			160	2 24
Wood, H. C		1000		1000	14 00
Webster, M. C	535			535	7 50
Wooley, B. F	886	1800	50	2736	38 30
Warren, Harriett		275		275	3 86
Walsh, W. H	60			60	84
Williams, D. M			30	30	42

Dist. No. 3 (cont'd).

	Land.	Town lots.	Personal.	Total.	Tax.
Williams, Mrs. D. M		1650		1650	$23 10
Wager, Ida	400			400	5 60
Western Union Telegraph Co			780	780	10 92
Walling, N. P	1800	1250	865	3915	54 82
Williams, Mary S	200			200	2 80
Williams, J. H	100			100	1 40
Wayne, A. S	500			500	7 00
Wolford, H. J. & J. A	150			150	2 10
Wayne, Permelia V	250			250	3 50
Same, Gd. Willie Wayne	100			100	1 40
Wayne, Ben T	250			250	3 50
Young, R. E. & Co			4000	4000	56 00
Young, R. E			110	110	1 54
Young, W. L		700		700	9 80
					$5345 16

58 Dist. No. 4.

Atchley, James	300		220	520	7 28
Atchley, Eunice C	150		57	207	2 90
Atchley, Jas. E	460			460	6 44
Atkinson, Mrs. Jennie	1500			1500	21 00
Atchley, Zora	25			25	36
Anderson, Wm. T	164			164	2 30
Allen, Lou	50			50	70
Atchley, Jesse S	90		225	315	4 42
Atkinson, Rob't N	300			300	4 20
Antle, Albert	175			175	2 46
Allen, David J			65	65	92
Berry, Ben F	85		25	110	1 54
Benningfield, Ram H	500			500	7 00
Burton, Mont	100		120	220	3 08
Brockman, Joe	160			160	2 24
Brockman, Lloyd	60			60	84
Barnett, Logan S			235	235	3 30
Burress, Wm. T		50		50	70
Burge, Wm	168			168	2 36
Benningfield, J. H	100			100	1 40
Bright, Wm. S	205			205	2 88
Bottoms, Mariah	150			150	2 10
Berry, Joshua	150			150	2 10
Benningfield, Sarah E	200			200	2 80
Benningfield, F. Ellsworth	150		65	215	3 02
Benningfield, Rich. A	355		10	365	5 12
Benningfield, R. R	450		35	485	6 80
Bell, Sarah F	300			300	4 20
Benedict, Jno. W	300		140	440	6 16
					$110 62

59

Forward					$110 62
Burress, Geo. P	25			25	36
Baldwin, Wm	290		10	300	4 20
Baldwin, Mrs. J. F	200			200	2 80
Burress, Charles		150		150	2 10
Burress, Jos. H		100	135	235	3 30
Burdick, W. D	1200			1200	16 80
Same & Son			450	450	6 30

Dist. No. 4 (cont'd).

	Land.	Town lots.	Personal.	Total.	Tax.
Buchanan, Wm	800		145	945	$13 24
Blevins, Chas	300			300	4 20
Burress, Sarah A	109			109	1 52
Bailey, Wm. T.			60	60	84
Burress, Mrs. N. S.	250			250	3 50
Bailey, Wm. P.	435		30	465	6 52
Burge, Thomas	150			150	2 10
Burress, Martha B. (N. R.)	50			50	70
Burress, Edward	300		33	333	4 66
Benedict, Livi E.	400			400	5 60
Barnett, Jas. T.			10	10	14
Buchanan, J. Scott	800		320	1120	15 68
Barnes, W. T.			25	25	36
Buchanan, A. H.			85	85	1 20
Buchanan, Mary E	500			500	7 00
Burge, Jose B.	150		40	190	2 66
Bumgarner, Geo.	200			200	2 80
Burress, Jno			25	25	36
Cave, Crom. H.			85	85	1 20
Christie, Crom. H.	450		85	535	7 50
Same, gdn. Seymour Christie, &c.			27	27	38
Cave, Wm. P.	115			115	1 62
Clark, Jas. A.	300			300	4 20
					$234 46
60					
Forward					$234 46
Coontz, Jno. A	550			550	7 70
Cundiff, Mary C.	800			800	11 20
Carroll, D. Rufus	1033		105	1138	15 94
Cundiff, Thos. G.			45	45	64
Carroll, David H.	900		15	915	12 82
Cave, Stephen	750		25	775	10 86
Canada, James	300		5	305	4 28
Cave, Geo. R.			30	30	42
Coleman, J. T.			55	55	78
Carroll, Eliza E.	300			300	4 20
Click, Joseph	70			70	98
Cox, Geo. W.	77			77	1 08
Carroll, Wm. T.	500			500	7 00
Cobb, Sarah E.		200	120	320	4 48
Coleman, Matilda J.		250		250	3 50
Callahan, E. M.	100			100	1 40
Cobb, Wm. H.			50	50	70
Callahan, J. W.	35			35	50
Click, Lou R	25			25	36
Coppock, Elias	1900		235	2135	29 90
Carroll, J. M	400		182	582	8 14
Caldwell, J. T.	3656	1179		4835	67 70
Campbell, Wm	230			230	3 22
Chewning, Rob't H.	700		63	763	10 68
Clark, Elzy	1500			150	2 10
Cripe, D. E.	1250		193	1443	20 20
Campbell, R. H.	700		78	778	10 90
Campbell, J. F.	205			205	2 88
Cook, Jas. T.			65	65	92
Carse, Henry (N. R.)	100			100	1 40
Chewning, B. F. (N. R.)	950			950	13 26
					$494 60

61 Dist. No. 4 (cont'd).

	Land.	Town lots.	Personal.	Total.	Tax.
Forward					$494 60
Dudgeon, W. A	250			250	3 50
Dudgeon, Thos. J	1290		274	1564	21 90
Davis, Bettie	100			100	1 40
Dearen, W. H. (N. R.)	50			50	70
Davis, Jas. T			80	80	1 12
Dudgeon, Jno. R	200			200	2 80
Dearen, G. H	300			300	4 20
Davis, Jo. D	530		195	725	10 16
Davis, Sarah J	300			300	4 20
Davis, James R	750		150	900	12 60
Daugherty, Jos. M	100			100	1 40
Dudgeons & Johns	400			400	5 60
Dudgeon, Phil S			275	275	2 86
Dabney, Geo. (N. R.)	50			50	70
Dabney, Jas		300	20	320	4 48
Dabney, W. F	100	200	65	365	5 12
Dabney, Andy H	150			150	2 10
Edrington, Mrs. S. M	325			325	4 56
Edwards, Mary F	190			190	2 66
Elder, Granville	500			500	7 00
Fawcett, Martha	200			200	2 80
Ferrell, Marshall	65			65	92
Fawcett, Wm. E	600		330	930	13 02
Fisher, Mrs. E. J		100		100	1 40
Ford, Isaac			30	30	42
Ford, Jas. A			170	170	2 38
Ford, E. A	930		45	975	13 66
Ford, Wm. F			30	30	42
Ford, Stephen D	450			450	6 30
Faulkner, Rob't L	1960			1960	27 44
					$662 42

62

Forward					$662 42
Faulkner, J. W	750		13	763	10 68
Faulkner, Mrs. J. W	700			700	9 80
Faulkner, Nannie F	455		170	625	8 76
Faulkner, Mary	180			180	2 52
Goodin, Wm	1100		85	1185	16 60
Goodin, Jo. D			65	65	92
Gabeheart, D. J	25			25	36
Griffin, Mattie R	600			600	8 40
Griffin, Cary			110	110	1 54
Gaines, Arthur P	263			263	3 68
Gaines, F. B	1000		15	1015	14 22
Gaines & Gaines			600	600	8 40
Griffin, Jno. L	300		63	363	5 08
Graves, Archie			6	6	08
Gilpin, Jno. H	450			450	6 30
Gibby, Susie	125		35	160	2 24
Gibson, Jno. H	400		38	438	6 14
Gwinn, M. L			120	120	1 68
Gill, Mollie C	300			300	4 20
Hovious, W. B	100			100	1 40
Harrison, Joseph	300			300	4 20
Harrison, Mat L			40	40	56
Harrison, Thomas	850			850	11 90
Hubbard, F. M	150		8	158	2 22

Dist. No. 4 (cont'd).

	Land.	Town lots.	Per-sonal.	Total.	Tax.
Hardin, Deroy	400		185	585	$8 20
Hardin, Henry	125		180	305	4 28
Hardin, Nancy E	600			600	8 40
Hardin, J. E	82			82	1 14
Hardin, Henry & Bro			350	350	4 90
					$821 22
63					
Forward					$821 22
Hardin, E. B			40	40	56
Hazard, T. B	185		250	435	6 10
Hays, Luther W			25	25	36
Hatcher, B. H	400		638	1038	14 54
Higgins, P. C	350			350	4 90
Howard, Luther	470		275	745	10 44
Holben, Geo	295			295	4 14
Head, Margaret	30			30	42
Hubbard, Wm. L	576		39	615	8 62
Harter, David	2300			2300	32 20
Hughes, Mrs. J. Bryant	245			245	3 44
Hughes, J. Bryant			50	50	70
Hughes, Jo F	100			100	1 40
Hardin, Geo. D	583		300	883	12 36
Hardin & Beard		150	110	1250	17 50
Hardin, Jas. T	500	100	390	990	13 86
Hardwick, Jerry			25	25	36
Henson, C. C. (N. R.)	40			40	56
Henson, Jno. W	100			100	1 40
Johnston, Jno. A. (N. R.)	850			850	11 90
Johnson, Norman	240			240	3 36
Jarvis, Martha (N. R.)	330			330	4 62
Jarvis, Thos. (N. R.)	1320			1320	18 48
Johnson, Willie R	304		60	364	5 10
Johnson, Dan H	175			175	2 46
Johnson, Geo. A	250			250	3 50
Johnston, J. T	240			240	3 36
Johnson, Jas. W	250			250	3 50
Johns, Jo M	3000		560	3560	49 84
Johns, Dock	2725		890	3615	50 62
Jones, M. Jamison	150			150	2 10
					$1113 92
64					
Forward					$1113 92
Jones, Jno. W. (N. R.)	100			100	1 40
Johns, W. L	600		390	990	13 86
Jones, Malvina	400		160	560	7 84
Jones, Elxy L	255		135	390	5 46
Johns, Wade	1450		190	1640	22 96
Kerr, Jas. H	500		310	810	11 34
Knight, Jeremiah	240			240	3 36
Kelsey, Dr. O. M	15	250		265	3 72
Kerr, Jas. & T. D	500			500	7 00
Kerr, Steve L	1500			150	2 10
Kerr, Lucinda	300			300	4 20
Kerr, P. W	250			250	3 50
Kepler, J. W	1200		64	1264	17 70
Lemon, W. T	600			600	8 40
Lemon, Jno. J	600			600	8 40

Dist. No. 4 (cont'd).

	Land.	Town lots.	Personal.	Total.	Tax.
Lee, Wm. P.			175	175	$2 46
Lee, Sarah M.	600			600	8 40
Lee, Thos. S.	102		68	170	2 38
Lewis, Jas. E. (N. R.)	65			65	92
Lewis, Abe J.	105			105	1 48
Lindsay & Rice		1000	2300	3300	46 20
Monroe, R. S.	50			50	70
Murrah, Ed. R.	700		150	850	11 90
Murrah, Ed. P.	300			300	4 20
Mann, Lou. W.		50		50	70
May, Keen L.			40	40	56
Monroe, M. E.	300			300	4 20
Maxfield, Chas. F.	50			50	70
Murray, Eliza M.	250			250	3 50
May, Geo. T.			220	220	3 08
					$1326 54
65					
Forward					$1326 54
May, Henry			20	20	28
Murrah, Wm. B.	50		130	180	2 52
Mings, W. R.	100			100	1 40
Moore, M. W.	350			350	4 90
Mantz, C. F.	1400		445	1845	25 84
Miller, Rob't H. (N.R)	350			350	4 90
Miller, Wm. J	1300		270	1570	21 98
Morris, Mattie E.	800		147	947	13 26
Miller, I. K.	3150		975	4125	57 76
Miller, J. D., Jr.	700		107	807	11 30
Marcum, J. Lewis	50			50	70
Murray, Narcissus	150			150	2 10
Miller, James D., Sr.	750		190	940	13 16
Murray, Thos. A.	300			300	4 20
Martin, Jo T.	390		20	410	5 74
May, M. B.	1600		471	2071	29 00
Same, adm'r	1000	300	1403	2703	37 89
Miller, Wm. G	250			250	3 50
Moody, Mattie	2100			2100	29 40
Murray, Wm. T.			45	45	64
Newton, Wm			90	90	1 26
Newton, J. R.	1300			1300	18 20
Newton, David A	800			800	11 20
Newton, Wm L.	900			900	12 60
Nance, Jesse	650		400	1050	14 70
Prescott, Susie	190			190	2 66
Page, Susan C.	65			65	92
Puyear, Sallie	1700			1700	23 80
Puyear, N. B.			55	55	78
Petit, Jacob			100	100	1 40
					$1684 53
66					
Forward					$1684 53
Petit, Lydia C.	150			150	2 10
Pike, J. H.	237		50	287	4 02
Pike, Geo. L.			20	20	28
Pike, Wm., Sr.	150			150	2 10
Powell, Wm. N.			30	30	42
Powell, Andrew J	625			625	8 76

Dist. No. 4 (cont'd).

	Land.	Town lots.	Personal.	Total.	Tax.
Peterson, Jon. A	500		50	550	$7 70
Perkins, J. T	100			100	1 40
Peterson, Wm. H	275			275	3 96
Pike, Francis M	200			200	2 80
Prescott, Milton D	105			105	1 48
Puyear, Nancy	350			350	4 90
Perkins, Lewis M	100			100	1 40
Perkins, E. J	100			100	1 40
Pike, Jno. R	72			72	1 00
Parrott, Sallie T	75			75	1 06
Prescott, Thos. C	400			400	5 60
Phillips, Jno			25	25	36
Page, Jas. R	375			375	5 26
Page, R. P	280			280	3 92
Prescott, Martha M	150			150	2 10
Prescott, Henry	70			70	96
Page, Susan C. (N. R.)	65			65	92
Romine, Melvin			164	164	2 30
Rice, Ben. A	850			850	11 90
Russell, Rob't H	1000		125	1125	15 76
Risen, Jno. A	150			150	2 10
Reed, Jno. W	15			15	22
					$1780 71
67					
Forward					$1780 71
Robinson & Murrah		100	300	400	5 60
Rice, W. J			10	10	14
Rice, Snady P			25	25	36
Rice, Richard M	1150		600	1750	24 50
Rucker, W. I	258	125		383	5 36
Rodgers, H. I	90		105	175	2 74
Rodgers, Thomas			25	25	36
Romine, Geo. T	150			150	2 10
Russell, Rob't, Sr	350			350	4 90
Romine, Jas. R	308			308	4 32
Rice, W. A	1000			1000	14 00
Rice, Reuben	400			400	5 60
Rice, Samuel F			65	65	92
Robinson, Sarah E	300			300	4 20
Russell, J. W	880			880	12 32
Roach, Susan W	700			700	9 80
Rucker, Mary B	600			600	8 40
Rickel, Winchester	420			320	5 88
Rodgers, Jno. L	100		63	163	2 28
Russell, Jno. K	40			40	56
Rodgers, Mrs. M. J	310			310	4 34
Shreve, Mrs. M. B	400			400	5 60
Stayton, Peroy	125			125	1 76
Stayton, Jo. A	70			70	98
Smith, Martha W	130			130	1 82
Shively, Sam E			80	80	1 12
Shively, Edward	800			800	11 20
Swallows, Elijah			50	50	70
Stubbs, Peter C	250			250	3 50
Spratt, Nancy	1900		215	2115	29 62
					$1955 69

68 Dist. No. 4 (cont'd).

	Land.	Town lots.	Personal.	Total.	Tax.
Forward					$1955 69
Sinclair, Wayman	650			650	9 10
Sinclair, Rob't C.			40	40	56
Sander, Allen J	100			100	1 40
Sublett, Charlie			100	100	1 40
Shively, Herman			40	40	56
Shively, Elijah F	650		65	715	10 02
Sharp, Jno. T.	600			600	8 40
Smith, Jas. R.	150			150	2 10
Smith, Wm. T.	150			150	2 10
Smith, Jno. T.	194			194	2 72
Stephens, Eliza J	800			800	11 20
Stephens, Wm. T	40	875	1235	2150	30 10
Singler, J. & E.	125		875	1000	14 00
Singler, J. S			190	190	2 66
Singler, Ed			20	20	28
Scott, Andrew J	294			294	4 12
Settles, Jo			35	35	50
Settles, Katie	200			200	2 80
Sapp, Jas. M.	500		37	537	7 52
Steger, Sarah	231			231	3 24
Sublett, Branch (N. R.)	250			250	3 50
Stubby, J. W.	140			140	1 96
Smoot, J. W.	1240			1240	17 36
Shively, Dr. A.	3400		3260	6660	93 24
Sublett, Branch (N. B.)	965			965	13 52
Steger, McG	800		46	846	11 84
Stubby, Lumma N	1700			1700	23 80
Sublett, Nancy	700			700	9 80
Sublett, Wm. L	350			350	4 90
Subbs, Mary J.	800			800	11 20
Speer, Wm. T.	1120		147	1467	17 74
Speer, Jno. A.	375		38	413	5 78
					$2285 11

69

Forward					$2285 11
Speer, Ernest			25	25	36
Speer, David E.	200		20	220	3 08
Sublett, J. G.	150			150	2 10
Sublett, Riley	600			600	8 40
Steenberger, Sarah L.	200			200	2 80
Steenberger, B. F.			199	199	2 78
Shipp, Jno.	150			150	2 10
Sullivan, Taylor	606			606	8 48
Sublett, Henry	200			200	2 80
Sublett, Jas. T.			53	53	74
Shive, B. M.			527	527	7 38
Shipp, Samuel	200			200	2 80
Taylor, Millie	100			100	1 40
Tate, Isaac	4312		750	5062	70 86
Turner, F. P.	1072			1072	15 00
Turner, J. W.	1072			1072	15 00
Vaughn heirs	37			37	52
Vanhoozer, Mary	150			150	2 10
Willis, Burwell	400			400	5 60
Williams, Sam'l	200			200	2 80
Williams, W. W.	75			75	1 06
Williams, Matthew	10			10	14

Dist. No. 4 (cont'd).

	Land.	Town lots.	Personal.	Total.	Tax.
Wise, Sarah M.	250			250	$3 50
Willis, Jas. C.	250			250	3 50
Wright, Stephen	860			895	12 54
Watson, Eliza	400			400	5 60
Williams, Wm. B.	400			420	5 88
Wetherford, Rob't H.	400			420	5 88
Wetherford, Jas. H.	350			520	7 28
White, Jas. H.	75			75	1 06
					$2488 65
70 Forward					$2488 65
Williams, Jno. F.	300			300	4 20
White, Wm. P.			200	20	28
White, Jno. H.	715		645	1360	19 04
White, Elijah	200			200	2 80
White, Jno. B.	250			250	3 50
White, George			155	155	2 18
Williams, Julia A.	275		9	284	3 98
Ware, Cary G.	400			400	5 60
White, Rob't P.	300			300	4 20
Willis, Phil N.	200			200	2 80
Willis, Miles R.	200			200	2 80
Willis, Jno. (N. R.)	90			90	1 26
Ware, J. A.	400			400	5 60
Willis, Burt (N. R.)	200			200	2 80
Willis, Chas. W. (N. R.)	125			125	1 76
Wilkerson, O. P.			35	35	50
Wilkerson, Martha S.	200			200	2 80
Wilkerson, T. P.	475		75	550	7 70
Wilkenson, Jno. S.			50	50	70
Willis, Jno. H.	125			125	1 76
White, W. D.			60	60	84
Wilkerson, Minerva J.	600			600	8 40
Wilkerson, M. O.	300		103	403	5 64
Wilkerson, J. J.	779		170	949	13 28
Warren, Lizzie A.	500			500	7 00
					$2600 07

71 District No. 5.

Abell, Enoch	100			100	1 40
Bookout, Jas. S.		60		60	84
Bass, Alonzo	100		35	135	1 90
Bohanan, Jas. C.	170			170	2 38
Bass, Emma V.	150			150	2 10
Bass, Josiah, ag't for Oscar Bass	100			100	1 40
Same, ag't for Stanley Bass	100			100	1 40
Bright, Sam'l G.	100			100	1 40
Bright, Jno.	10			10	14
Bowen, Wm. A.	800		145	945	13 24
Bottom, Rob't E. (N. R.)	100			100	1 40
Bright, Lydia A.		600	25	625	8 76
Bailey, Nathan K.	135			135	1 90
Burress, Jno. T.	100			100	1 40
Burress, Rich. L.	200		255	455	6 38
Bright, Geo. W.	110	150	550	810	11 34
Bowen, E. R.	400		185	585	8 20

District No. 5 (cont'd).

	Land.	Town lots.	Personal.	Total.	Tax.
Beavers, Nancy G.	1000			1000	$14 00
Bowen, Wm.	1110		1160	2270	31 78
Bennett, Chas. H. (N. R.)	100			100	1 40
Cardwell, Wm. (N. R.)	50			50	70
Cox, Alfred	250		25	275	3 86
Cox, Caleb S.	125			125	1 76
Chelf, Mrs. M. A.	1500		210	1710	23 94
Cox, Jerry M.	300			300	4 20
Cox, Joshua, Sr.	75			75	1 06
Cabell, B. Frank	275			275	3 86
					$152 14
72					
Forward					$152 14
Cabell, B. Frank, gdn. J. A. Cabell	15			15	22
Childers, Lewis	100			100	1 40
Childers, Elisha	12		10	22	30
Cox, L. B.	240		135	375	5 26
Cox, Nancy E.	1200		135	1335	18 70
Cox, Nathan H.	137		200	337	5 72
Conder, Noah F.	40			40	56
Cabell, Alexander	209			209	2 92
Cox, Zedrick	175		50	225	3 16
Cox, Fountain	289			289	4 04
Chelf, Luther L.	275			275	3 86
Cox & Puyear		25	350	375	5 26
Cox, Mary A.	30			30	42
Cox, Samuel	45			45	64
Cox, Peggy	50			50	70
Childers, Jno. A.	60			60	84
Cox, L. B. Thomas	550		35	558	8 20
Chisholm, Jno. S.	160		120	280	3 92
Chisholm, Ben D.	800		70	870	12 18
Cox, Walker		500		500	7 00
Cox, Chas. W.			130	130	1 82
Cox, Wesley			45	45	64
Cox, Caleb S.	400			400	5 60
Cox, Willie	250			250	3 50
Cox, Joshua M.	1053		105	1158	16 22
Cox, Joseph	396			396	5 54
Cox, W. T.	600			600	8 40
Same, gdn. Jo Lee Gaddis			10	10	14
Cox, Jas. H.	70			70	98
					$280 28
73					
Forward					$290 28
Cox, Franklin P.	2000		305	2305	32 28
Colvin, Sam W.	200			200	2 80
Coz, Essie			35	35	50
Clark, T. J.	25			25	36
Cox, Eddie			60	60	84
Clark, J. W.	50			50	70
Cornelison, Jno. L.	240			240	3 36
Cox, Geo. W.		250		250	3 51
Cox, Nathan, Sr.	275		50	325	4 56
Caulk, Jas. Sam.	50			50	70
Cox, Mathis	50			50	70
Cox, Martha	55			55	78

Dist. No. 5 (cont'd).

	Land.	Town lots.	Personal.	Total.	Tax.
Cox, Nathan L. B.	75			75	$1 06
Durham, F. H.			10	10	14
Durham, J. R.		800	555	1355	18 98
Deller, Wm.	250			250	3 50
Dishion, Sam	30			30	42
Edelen, Jas. H. (N. R.)	50			50	70
Ellis, Joshua	125			125	1 76
Emmet, Rob't L.			20	20	28
Eades, Elizabeth N.	400			400	5 60
Eades, Geo.			50	50	70
Eades, Wm. C.			350	350	4 90
Eades, Jas. F.			70	70	98
Farmer, Willis G.	150		5	155	2 18
Ferguson, Foster R.			35	35	50
Farmer, Jno. C.	100			100	1 40
Faulkner, Thos. C.	420			420	5 88
Faulkner, Lamb	50			50	70
					$381 04
74					
Forward					$381 04
Farmer, Thos. J.	100			100	1 40
Farmer, W. B.	220		80	300	4 20
Fogarty, Patrick	50			50	70
Ford, Thos. F.	75			75	1 06
Gaylor, Mary	346			346	4 84
Gunter, Geo. W.	221			221	3 10
Gribbins, Jno. L.	15			15	22
Gribbins, Wm. P.	215			215	3 02
Gunter, Sandy	31			31	44
Gunter, Wm.	216			216	3 02
Gribbins, Jas.	375			375	5 26
Gribbins, Geo.	50			50	70
Gribbins, Thos. W.	45			45	64
Gribbins, Frank	300			300	4 20
Gribbins, Oliver			40	40	56
Gribbins, Martin T.	146		20	166	2 32
Gribbins, Roley			90	90	1 26
Garrett, Thos.	5			5	08
Gribbins, Uriah	180		5	185	2 60
Garrett, Wm. A.	35			35	50
Garrett, J. Mat	50			50	70
Gaddis, Nancy (N. R.)	125			125	1 76
Gabeheart, Jas. A.	25			25	36
Gribbins, Wm. C.	100			100	1 40
Grinstead, Elizabeth	60			60	84
Gill, Geo.	65			65	92
Gribbins, Henry	50			50	70
Gaddis, Wm.	100			100	1 40
Garten, Uriah			40	40	56
					$429 80
75					
Forward					$429 80
Gabeheart, R. L.	275	300	370	945	13 24
Gabeheart, Wm. A.	460			460	6 44
Gaddis, Sanford	30			30	42
Hocket, W. F. (N. R.)	50			50	70
Herron, Samuel	250			250	3 50

Dist. No. 5 (cont'd).

	Land.	Town lots.	Personal.	Total.	Tax.
Hardwick, Frank M.	100			100	$1 40
Helen, Mary	614			614	8 60
Samd, gdn. Ed Helen	142	100	350	592	8 28
Harmon, Nancy	6			6	08
Hogan, Elizabeth	500			500	7 00
Hogan, Walta F.	20			20	28
Helen, Mosby	150			150	2 10
Helen, Jno. W.	900		210	1110	15 54
Helen, Garland			50	50	70
Hardin, Wm.	40			40	56
Hunter, Wm. F.		750	25	775	10 86
Hogan & Hogan			600	600	8 40
Hogna, Wayne	400	500	95	995	13 94
Hogna, Alice	770			770	10 78
Herron, Willis G.	5			5	08
Hiestan, C. V.		300	130	430	6 02
Hogna, Jas.	165		160	325	4 56
Highes, Nathan	100			100	1 40
Hellen, Wm. L. (N. R.)	60			60	84
Herron, Mary.	300			300	4 20
Herron	5			5	08
Hogna, Lydia	700		95	795	11 14
Johnson, Balaam	90			90	1 26
Lowe, Wm.	250			250	3 50
					$575 70
76					
Forward					$575 70
Lowe, W. T. (N. R.)	280			280	3 92
Lowe, B. F.	423		95	518	7 26
Lowe, Merritt	200		70	270	3 78
Lawson, Wm. L.	20			20	28
Loy, Eli	210		20	230	3 22
Land, Jno. C.	270			270	3 78
Lyon, Mary A.	300	350		650	9 10
Mann, Fletcher V.	900		120	1020	14 28
Malone, Sam'l	100			100	1 40
Mann, Milton			90	90	1 26
Mann, Wm. J.	200			200	2 80
Mann, Danford	1615		665	2280	31 92
Malone, Uriah	250			250	3 50
Mann, Mary J.	805			805	11 28
Malone, Bluford A.	125			125	1 76
McWhorter, Jas. B.	50	150	65	265	3 72
McWhorter, Chas. H.		100		100	1 40
Murrell, Mary	600		35	635	8 90
Mings, Judy F.	200			200	2 80
McDaniel, Wesley	30			30	42
Mann, Jno. C.	80			80	1 12
McWhorter, Emma		100		100	1 40
McWhorter, A. M.	100			100	1 40
McWhorter, Wm. S.			10	10	14
McWhorter, Geo.	200	275	70	545	7 64
Murphey, Wm. R.	500		5	505	7 08
McDaniel, Jas. W.	230			230	3 22
Mann, Moses	100			100	1 40
Murphy, Mike	55			55	78
					$716 68

77 Dist. No. 6 (cont'd).

	Land.	Town lots.	Personal.	Total.	Tax.
Forward					$716 66
Mann, Jno. D.	100			100	1 40
Moore, Wm. A	500		25	525	7 36
Murrell, Jas. W	160			160	2 24
Murrell, Wm. J.	650		35	685	9 60
Moore, Miranda	100			100	1 40
Murrell, Edgar			170	170	2 38
Murrell, Jno. T.	50		170	220	3 08
Murrell, Oliver			205	205	2 88
Mann, Redford	815			815	11 42
McDaniel, Jack	75			75	1 06
Mings, Jno.	125			125	1 76
Mann, Jno. B.	55			55	78
Minor, Geo. W	645		180	825	11 56
Same, gdn. Sanford, minor, &c			37	37	52
Mann, Robert		75		75	1 06
Malone, Jas.	150			150	2 10
Mercer, Malinda		100		100	1 40
Maupin, Calvin	200			200	2 80
Murrell, Walter			30	30	42
Marple, Mahala		150		150	2 10
Mannsville & Spurlington Telephone Co			100	100	1 40
Noel, Willis (N. R.)	262			262	3 66
Noel, Jno. W	380		5	385	5 40
Newbolt, Geo. P. (N. R.)	150			150	2 10
Overstreet, Jas. (N. R.)	75			75	1 06
Purdy, Wm	50			50	70
Phillis, Elijah R.	25		225	250	3 50
Proctor & Troutman	80			80	1 12
Phillips, Zeph.	100			100	1 40
Phillips, Lattie			120	120	1 68
					$806 00

78

Forward					$806 00
Phillips, Rufus	250			250	3 50
Phillips, Samuel A	600			600	8 40
Phillips, Clarence S			50	50	70
Penn, Jno	315			315	4 42
Penn, H. D.	1220			1220	17 08
Phillips, Wm. E.	950		210	1160	16 24
Phillips, Wm. J.	300		20	320	4 48
Phillips, Aylett B.	350			350	4 90
Puyear, Wm. L.	70			70	98
Puyear, Geo. A	505		565	1070	14 98
Pointer, Geo. W.	50			50	70
Prewitt, Martha S.			1105	1105	15 48
Phillips, Jno.	600		434	1034	14 48
Peterson, Geo. W	603	500	2145	3248	45 48
Same, gdn. Ben Vaughn			118	118	1 66
Same, pres. B. M. & M. T. Co			100	100	1 40
Peterson, Mrs. T. A	2552	400	1125	4077	57 08
Rhodes, Wash	500		40	540	7 56
Read, Thos. D., gdn. W. D. & L. W. Rhodes	66			66	92
Routen, Marion	145			145	2 04
Read, Wm. H.	400			400	5 60
Richeson, Jo M	20			20	28

Dist. No. 5 (cont'd).

	Land.	Town lots.	Personal.	Total.	Tax.
Raikes, Jas. M.	100			100	$1 40
Read, Sam	290			290	4 06
Read, Mary	609		1015	1624	22 74
Rhodes, Elijah	150			150	2 10
Read, Mary L.	1330		70	1400	19 60
Rouse, Solomon (N. R.)	25			25	36
Rhodes, Nannie J	50		35	85	1 20
					$1085 82
79					
Forward					$1085 82
Rouse, Amanda C	320		50	370	5 18
Routen, W. J.	45			45	64
Rhodes, David	260		75	335	4 70
Richeson, Jno.	35		20	55	78
Rhinearson, Jno	225			225	3 16
Stayton, E. T. (N. R.)	200			200	2 80
Stayton, J. A. (N. R.)	120			120	1 68
Spalding, J. B. (N. R.)	10			10	14
Spurling, Diana	300			300	4 20
Savage, Geo.	250			250	3 50
Stayton, Green B.	100			100	1 40
Stayton, N. D. (N. R.)	165			165	2 32
Sharp, Mollie	50			50	70
Spurling, H. R.		175		175	2 46
Spurling, Joseph		25		25	36
Sapp, Jno.			90	90	1 26
Sapp, Geo. A	755		90	845	11 84
Smock, Jno	450		65	515	7 22
Same, agt. Quincy Hogan	180			180	2 32
Shanklin, Jas. I.	25		120	145	2 04
Stamp, A. M.	85		395	480	6 72
Stamp, W. E.	30			30	42
Stamp, Press W	300			300	4 20
Stamp, Andrew J	150			150	2 10
Smith, Nettie	275			275	3 86
Sullivan, Rob't H	460		10	470	6 58
Sympson, Geo.	500		380	880	12 32
Sapp, R. K	600		155	755	10 58
Shanklin, John	400			400	5 60
Sapp, Jas. D.	645		210	855	11 98
					$1208 88
80					
Forward					$1208 88
Shreve, Ben A	200	350	800	1350	18 90
Shreve, Geo. R.	370		35	405	5 68
Shanklin, Thos.		250		250	3 50
Smith, W. H	225			225	3 16
Schanlan, W. P.	25			25	36
Stephens, Jo W.	500			500	7 00
Thornton, Eliza & sister	20			20	28
Tucker, Wm. T.			190	190	2 66
Tucker, Chas. T.	84		125	209	2 92
Tucker, Alexander	284		300	784	10 98
Tucker, Willis	50			50	70
Tungate, Geo. A.	60			60	84
Tungate, Jno. M	70			70	98
Tucker, Mary F.	43			43	60

Dist. No. 5 (cont'd).

	Land.	Town lots.	Personal.	Total.	Tax.
Towns, Joseph, gdn. Mandie B. Towns	243		120	363	$5 08
Tungate, Lucy A.	250			250	3 50
Tucker, B. W. & Son			500	500	7 00
Tucker, B. W. & Bro	255		100	355	4 98
Tucker, B. W	875		90	965	13 53
Tucker, Geo. W., Jr	240		150	390	5 46
Turner Bros.			1900	1900	26 60
Turner, R. H.			10	10	14
Turner, J. L.			15	15	22
Tungate, Milton	250		105	355	4 98
Underwood, Geo. H.	50			50	70
Veatch, Ed. & Jas.	50		500	550	7 70
Vaughn, Fletcher			60	60	84
Vaughn, Wm. T.			100	100	1 40
					$1349 57
81					
Forward					$1349 57
Vaughn, Leroy	350			350	4 90
Vaughn, Jno. W.	810			810	11 34
Vaughn, Sarah M.	500		110	610	8 54
Viers, A. J.	75			75	1 06
Vaughn, Wesley	625		75	700	9 80
Wise, Alexander	50			50	70
Walford Bros.	50			50	70
Waller, W. E.			310	310	4 34
Waller, Florence	620			620	8 68
Wooley, Mary	94			94	1 32
Wooley, Rob't	450		95	545	7 64
Wooley, David	25			25	36
Wilson, Samantha	50			50	70
Whitehead, Nathan	100			100	1 40
Wooley, Jas. F.	300			300	4 20
Woodman, Susan G.	300			300	4 20
Whitely, Jno.	300			300	4 20
Whitley, Mary J.	200			200	2 80
Warren, Sam'l W.	140		215	355	4 98
Warren, Nancy E.	575			575	8 06
Wood, W. G.	500			500	7 00
Wayman, R. M. (N. R.)	50			50	70
Wooley, Nancy J.	210			210	2 94
Wooley, Henry's heirs	200			200	2 80
Wooley, A. Thomas			75	75	1 06
Wooley, Jno. H.	800			800	11 20
Wright, Lacy	100			100	1 40
Witt, W. R.		300		300	4 20
Yowell, W. H.	2000		735	2735	38 30
					$1509 09
82					
Forward					$1509 09
Yowell, W. H., pres. of C. E. & M. T. C. Co.			3000	3000	42 00
Yowell, Evan			190	190	2 60
					$1553 69

District No. 6.

	Land.	Town lots.	Personal.	Total.	Tax.
Allen, Sam'l	210			210	$2 94
Abell, Jno. G	135			135	1 90
Abell, Matilda A	25			25	36
Bragg, Nettie	400		855	1255	17 58
Banks, Jno. L	200			200	2 80
Benningfield, Rich. W	250			250	3 50
Benningfield, W. M	200			200	2 80
Brown, David	126			126	1 76
Bowen, Mattie	400			400	5 60
Buckman, Demetrius	175			175	2 46
Brockman, Rial	60			60	84
Bowles, C. W	250			250	3 50
Bowles, Paul C	350		50	400	5 60
Brockman, Jno	60			60	84
Bowles, Lydia A	1000	200	585	1785	25 00
Bowen, Geo. A	1000		765	1765	24 72
Bowen, Jno. T	550		300	850	11 70
Same, agt. Sapphire Bowen			150	150	2 10
Bowen, Jas. L			165	165	2 32
Bowen, Rezin	513		55	568	7 96
Bowen, Jno. R			245	245	3 44
Benningfield, Burr H	360			360	5 04
Brockman, Jasper	100			100	1 40
Bragg, Chas. H	200			200	2 80
					$138 96
83 Forward					$138 96
Bright, Daniel H	130		45	175	2 46
Bowles, Frank	180			180	2 52
Bowles, Jno	510			510	7 14
Colvin, Martha A	160			160	2 24
Caulk, Flora	10			10	14
Caffey, Samuel	100			100	1 40
Colvin, Henderson	581			581	8 14
Caffey, Ben F	300		5	305	4 28
Col, Mary M	800			800	11 20
Colvin, Jas			40	40	56
Crittenden, Jno. L	500			500	7 00
Chelf, Oscar			115	115	1 62
Campbell, Porter L			60	60	84
Caulk, Andy B	200			200	2 80
Davis, Eliza	25			25	36
Decker, Jack W	175			175	2 46
Davis, Jas. F			30	30	42
Davis, J. Wesley	300			300	4 20
Edelen, Jas	25			25	36
Edelen, Minnie	50			50	70
Farmer, Willie G	60		60	120	1 68
Frogg, Jas. E			15	15	22
Frogg, Rezen			170	170	2 38
Frogg, Wm. A	300			300	4 20
Frogg, Jno. G	80			80	1 12
Farmer, Elizabeth	100		200	300	4 20
Gabeheart, Willie	72			72	1 00
Gilpin, W. G	300			300	4 20
Goodin, Jas	130			130	1 82
Gwinn, Rob't D	400			400	5 60
					$226 22

84 Dist. No. 6 (cont'd).

	Land.	Town lots.	Personal.	Total.	Tax.
Forward					$226 22
Gilpin, W. F	640		75	715	10 02
Hill, Bluford	300			300	4 20
Hill, A	747		115	862	12 06
Hill, Clem			140	140	1 96
Harp, Alex			15	15	22
Hayner		150		150	2 10
Hay, Jas. H	75			75	1 06
Hohland, Texas	250			250	3 50
Hunt, Jno. D	36			36	50
Hollenback, F. D	200			200	2 80
Harmon, H. O	400			400	5 60
Jones, Jno. T	150			150	2 10
Jarboe, Tol	36			36	50
Love, Hannah J	150			150	2 10
Minor, Rob't O	200			200	2 80
Melton, B. J	800		215	1015	14 22
Melton, David A	109		60	169	2 36
Melton, C. W	195			195	2 74
Minor, Burley	180			180	2 52
Murray, N. B	400			400	5 60
Miner, Jas. W	300			300	4 20
Myers, Simon	300			300	4 20
Newton, A. A		50		50	70
Newton, Tobias	140			140	1 96
Newton, W. G	500			500	7 00
Newton, Jas. R	75			75	1 06
Newton, Caroline A	100			100	1 40
Odewalt & Wise Bros			150	150	2 10
Odewalt, W. W	225			225	3 16
Oaks, Milton	25			25	36
					$331 32

85

Forward					$331 32
Oaks, Luvica V	300			300	4 20
Puyear, Mike	100			100	1 40
Puyear, Mary C	255			255	3 58
Puyear, Arbel A			75	75	1 06
Puyear, Felix M	100			100	1 40
Porter, Daniel	75			75	1 06
Puvis, Ben C	275			275	3 86
Pratt, Henry	480		35	515	7 22
Phillips, Elijah	500			500	7 00
Phillips, Jo. T	150			150	2 10
Phillips, Jno. B	150			150	2 10
Railway, Geo	350			350	4 90
Rafferty, Thomas	100			100	1 40
Russell, S. E	100			100	1 40
Raffety, Jas. W	100			100	1 40
Russell, Jno. E	100			100	1 40
Russell, Forrest	200			200	2 80
Rexroat, Henry G. (N. R.)		100		100	1 40
Robinson, Sarah W	90			90	1 26
Richeson, Jas. M	250			250	3 50
Rannells, Austin	150			150	2 10
Rice, David E	700		83	783	10 96
Railey, C. W			50	50	70

Dist. No. 6 (cont'd).

	Land.	Town lots.	Personal.	Total.	Tax.
Spurling, Stephen L.	250			250	$3 50
Shively, Perry	300			300	4 20
Shook, E. C.	125			125	1 76
Spurling, Catherine H.	250			250	3 50
Spurling, Fleet S.	90			90	1 26
Smith, Wheat	363			363	5 08
Spurling, J. W.	1304		650	1954	27 36
					$446 18
86					
Forward					$446 18
Spurling, Wm. E.	200			200	2 80
Sapp, W. G.	50			50	70
Smith, T. J.	375	1000	1025	2400	33 60
Smith, T. J. & Bro.	840		595	1435	20 10
Smith, Jno. W.	940		80	1020	14 28
Shively, D. A.	1100		520	1620	22 68
Shively, Jno. G.	759		291	1050	14 70
Spurling, Lou	450			450	6 30
Shively, Wm.	170			170	2 38
Shipp, Geo. W.	100		40	140	1 96
Shipp, Wm. J.	325			325	4 56
Shively, Hardin			75	75	1 06
Shively, Wm. J.	500		150	650	9 10
Shively, Thos.			40	40	56
Spurling, Jane	900		2100	300	42 00
Sapp, Green B.	460			460	6 44
Spurling, Sallie C.	1050		710	1760	24 64
Spurling, Fred.			130	130	1 82
Sears, Sophie E.	450		1095	1545	21 64
Tucker, Ann	300			300	4 20
Tucker, Jno. I.	35			35	50
Tucker, Wm.	600		110	710	9 94
Tenneson, Jas.	58			58	82
Wright, Jas. N.	70			70	1 98
Wise, Richard L.	100			100	1 40
Wise, Samuel T.	110			110	1 54
White, Jas.	100			100	1 40
Wise, Elias	75			75	1 06
Witt, Charlie	490		5	495	6 94
					$706 38
87					
Forward					$706 38
Wilson, Hardin					
Wagner, W. F.	600		5	605	8 48
Same, agent for wife			155	155	2 18
White, Geo.	250			250	3 50
Wright, Sam. or E. D. Wright	80			80	1 12
Wright, Sam.	180			180	2 52
Wise, T. A.	507		135	642	9 98
Wright, Ed & Bro.	100			100	1 40
Wise, Elias C.	100		215	315	4 42
Wright, C. W.	126			126	1 76
White, Wm.	210			210	2 94
Wickwire, Geo. R. (N. R.)	390			390	5 46
Wilson, Wm.	304			304	4 26
Wilson, Rob't H.	301			301	4 22
Wilson, Icilius	350			350	4 90

Dist. No. 6 (cont'd).

	Land.	Town lots.	Personal.	Total.	Tax.
Wise, Elijah			25	25	36
White, Lydia E.	200			200	$2 80
Wright, Chas. E.	175			175	2 26
Wise, Mary	345			345	4 84
Wise, Buck	20			20	28
Wise, Jas. B.			10	10	14
Wise, Jas. R.	150			150	2 10
Wise, Jno. S.	250			250	3 50
Wise, Louisa J.	300			300	4 20
Yates, Jno. R.	240			240	3 36
Zeller, Henry	135			135	1 90
Zeller, Mitanda	400			400	5 60
	150			150	2 10
					$795 96

88

Colored.

District No. 1.

Compton, Jno.	200			200	2 80
Johnson, Rebecca	100			100	1 40
					$4 20

District No. 2.

Anderson, Geo	20			20	28
Anderson, Jack			35	35	50
Burress, Sylvia	240			240	3 36
Barnee, Harriett	250			250	3 50
Buckner, Charlie	16			16	22
Barbee, Cook	80			80	1 12
Buckner, Richard	123			123	1 72
Coakley, Henry C	60			60	84
Cowherd, W. P.	25			25	36
Cowherd, Maraiah, adm'r	68			68	96
Durrett, Hal	50			50	70
Durham, Fannie	50			50	70
Durham, Jas.	8			8	12
Durrett, Peggy	180		130	310	4 34
Durham, Henry	59			59	82
Edwards, Amanda	25			25	36
Graham, Wm	100			100	1 40
Graham, Thos.	40			40	56
Gaddie, Wm. (N. R.)	40			40	56
Gaddie, Anthony	10			10	14
Gaddie, Sarah	367			367	5 12
Graham, Wm.	120			120	1 68
Harding, Paulina	100			100	1 40
Johnson, Richard	35			35	50
Kirtley, Prince	75			75	1 06
					$32 34

89

Forward					$32 34
Richeson, J. E.	80			80	1 12
Sanders, Jeff	70			70	98
Sullivan, Richard	15			15	22
Tandy, Jim	40			40	56

Colored.

Dist. No. 2 (cont'd).

	Land.	Town lots.	Personal.	Total.	Tax.
Thompson, Wm.	....	.....	25	25	36
Thompson, Jno.	144	.....	.....	144	$2 02
Thurman, Frank	125	.....	.....	125	1 76
Webster, Phillip	300	.....	.....	300	4 20
					$43 56

District No. 3.

Atkinson, Tobe	40	.....	.....	40	56
Anderson, June	210	.....	.....	210	2 94
Bridgewather, Elizabeth	.....	25	.....	25	36
Burress, Rob't	.....	80	.....	80	1 12
Bottoms, Henry	.....	.....	20	20	28
Burress, Simon	75	.....	.....	75	1 06
Buckler, Lloyd	40	.....	.....	40	56
Buchanan, Richard	60	.....	.....	60	84
Buckner, Jno., Jr	.....	50	.....	50	70
Bottoms, Stephen	110	.....	.....	110	1 54
Buckner, Jno., Sr	.....	50	.....	50	70
Bullock, Brittiania	.....	100	.....	100	1 40
Cox, Mary	.....	75	.....	75	1 06
Colvin, Drury	.....	25	.....	25	36
Campbell, Louisa	.....	25	.....	25	36
Cook, Edmund	.....	30	.....	30	42
Caldwell, Rob't	280	.....	.....	280	3 92
Cowherd, Jno.	150	.....	.....	150	2 10
Cowherd, Lizzie	.....	100	.....	100	1 40
Cloyd, Ellen	30	.....	.....	30	42
Campbell, W. H.	25	.....	.....	25	36
Cowherd, Wm. B	550	.....	.....	550	7 70
					$30 16
90 Forward	.....	.....	.....	.....	$30 16
Dearen, Lizzie	75	.....	.....	75	1 06
Durham, Sallie	.....	75	.....	75	1 06
Doughlas, Geo	.....	75	.....	75	1 06
Durham, Hattie	.....	60	.....	60	84
Durham, Francis	.....	125	.....	125	1 76
Durham, Thos	.....	75	.....	75	1 06
Gaines, Nelson	25	.....	.....	25	36
Green, Mollie	.....	225	.....	225	3 16
Hazard, Scott	25	.....	.....	25	36
Hazard, Flem	25	.....	.....	25	36
Hoskins, Chas	.....	150	.....	150	2 10
Hoskins, Andy	30	.....	25	55	78
Hunt, Will	.....	50	.....	50	70
Hill, Jno. W.	.....	200	.....	200	2 80
Hodgen, Richard	70	.....	.....	70	98
Hodgen, Martha	.....	370	.....	370	5 18
Hubbard, Rob't. H	.....	200	.....	200	2 80
Hodgen, W. T	.....	250	.....	250	3 50
Hodgen, Geo.	.....	300	.....	300	4 20
Hubbard, Wm	150	.....	.....	150	2 10
Hill, Thos	125	.....	.....	125	1 75
Hubbard, Mariah	445	.....	.....	445	6 23

Colored.
District No. 3 (cont'd).

	Land.	Town lots.	Personal.	Total.	Tax.
Jarboe, Jno.		300	55	355	$4 97
Jackson, Bell		50		50	70
Johnson, Stepney	50		20	70	98
Johnson, Salie		60		60	84
Jones, Warner	60			60	84
Kirtley, Dock	100			100	1 40
Kirtley, Maggie	75			75	1 05
Kerr, Jno.		75		75	1 05
Lewis, Callie		150		150	2 10
Lively, Cary		100		100	1 40
					$89 69
91					
Forward					$89 69
Lively, Jeff	60	140		200	2 80
Lang, Carrie		135		135	1 89
Mays, Biddie		50	20	70	98
Miller, Nellie		150		150	2 10
Mays, Wm.	250			250	3 50
Miller, Thos.	100	150		250	3 50
Montague, Elzy		100		100	1 40
Mottley, Jas.	252			252	3 53
Newton, Jack	25			25	35
Nelson, W. A			35	35	49
Partoll, Elijah	100	100		200	2 80
Parrott, Sam H.	15			15	21
Redman, Anthony		150		150	2 10
Redman, Rob't	60			60	84
Redman, Wm.	60			60	84
Roberts, Elizabeth		100		100	1 40
Rice, Dan A.	200			200	2 80
Rice, Rev. Dan		100		100	1 40
Roach, Frank		75		75	1 05
Roach, Caroline		75		75	1 05
Roach, Geo.		60		60	84
Roach, Nannie		100		100	1 40
Redman, Melvin		60		60	84
Rice, Geo.		75		75	1 05
Reeves, Jno.		50		50	70
Smith, Jno. W.	50			50	70
Sanders, Squire	90			90	1 26
Smith, Wesley	200			200	2 80
Smith, Wesley, Jr.			40	40	56
Smith, Wesley A			25	25	36
Sharp, Oscar	80			80	1 12
Spratt, Geo.	50			50	70
					$137 05
92					
Forward					$137 05
Smith, Wm. T.	100			100	1 40
Smith, Sam	50			50	70
Smith, Jno.	230			230	3 22
Tucker, Jack	75			75	1 06
Tandy, Ida		75		75	1 06
Vancleave, Dick		75		75	1 06
Wilson, J. R.	60			60	84
Williams, Jno.	20			20	23
White, P. A.		300		300	4 20

Colored.

Dist. No. 3 (continued).

	Land.	Town lots.	Personal.	Total.	Tax.
White, Jas. A.	100			100	$1 40
White, Ed.	85			85	1 20
Wilson, Mrs. Virgie		100		100	1 40
					$154 87

District No. 4.

Buchanan, Loyd & Geo.	100		3	103	1 44
Buchanan, Geo.			25	25	36
Carlile, Wes.			10	10	14
Carlile, Thomas	15			15	22
Caldwell, Irvin	50		10	60	84
Caldwell, Harris			83	83	1 16
Caldwell, Wm.	195			195	2 74
Caldwell, Lavina	475			475	6 66
Caldwell, Wm. W.	133			133	1 86
Durham, J. J.	570			570	7 98
Dupee, Jas.	20			20	28
Davis, Richmond	75			75	1 06
Gowdy, Nancy J.	150			150	2 10
Graves, Stephen	129			129	1 80
Gaines, Alfred C.	100			100	1 40
					$30 04
93 Forward					$30 04
Gilmore, Thos.					
Gowdy, Hardin	100			100	1 40
Gowdy, J. T.	70			70	98
Hubbard, Richard	160			160	2 24
Johnson, Barrett	80			80	1 12
Jones, Zerley	790		600	1390	19 46
Jones, Cooper	75			75	1 06
Jones, Jas.	100			100	1 40
Miller, Benj	60			60	84
Mays, Archie	500			500	7 00
Mays, Geo.	100			100	1 40
Miller, Geo. R.	100			100	1 40
Parker, Henry			15	15	22
Price, Wesley	100			100	1 40
Page, Millie	100			100	1 40
Rider, Mary A.	25			25	36
Rider, Lucinda	100			100	1 40
Sharp, Jas.	200			200	2 80
Shith, Tobe	150			150	2 10
Sidney, Fannie	200		185	385	5 40
Sidney, Aaron	35			35	50
Smith, Wm.			50	50	70
Taylor, Robin	25			25	36
Tate, Jack	15			15	22
Tate, Wm.	495			495	6 94
White, David	540			540	7 56
White, Thomas	40			40	56
Williams, Mary S.	225			225	2 76
William, Edmund	250			250	3 50
	120			120	1 68
					$108 20

94 **Colored.**

District No. 4 (cont'd).

	Land.	Town lots.	Personal.	Total.	Tax.
Forward					$108 20
Williams, T. W.	42			42	58
Williams, Archie	224			224	3 14
Willis, Claiborne	15			15	22
					$112 14

District No. 5.

Shively, Chas	130			130	1 82
Tucker, Geo	50		55	105	1 48
					$3 30

District No. 6.

Cave, Lewis	80			80	1 12
Rice, J. H.	50			50	70
Spurling, Jas.	25			25	36
Spurling, Ed	50			50	70
Sanders, Harriett	60			60	84
Spurling, Jas.	50			50	70
Tucker, Lorenzo	50			50	70
Wilson, Sallie	100			100	1 40
Bank of Campbellsville franchise tax		50,040.00			700 56
L. & N. R. R., franchise tax		51,960.00			727 44
					$1434 52

95 *Recapitulation.*

	White.	Colored.
District No. 1	$721 18	$4 20
District No. 2	1412 12	43 56
District No. 3	5345 16	154 87
District No. 4	2600 07	112 14
District No. 5	1553 69	3 30
District No. 6	795 96	1434 52
	$12,428 18	$1,752 59
Grand total		$14,180 77

The additional report above referred to is as follows:

Circuit Court of the United States for the District of Kentucky.

MARC HUBBERT, Plaintiff,
vs.
TAYLOR COUNTY, Defendant.

Additional Report.

David L. May, commissioner for additional report, states to the court that he published in the Lebanon Enterprise, a newspaper published in Marion county, and in the issues thereof for November 16th, November 23rd and November 30th, the following notice:

Circuit Court of the United States for the District of Kentucky.

MARC HUBBERT, Plaintiff,
vs.
TAYLOR COUNTY, Defendant.

Notice.

Notice is hereby given that I have filed in court my report in the above case, showing the amount which it will be necessary for each of the taxpayers of Taylor county to pay in order to pay off
96 the judgment herein and that said report is subject to exceptions to be filed in the clerk's office until January 7th, 1901.

DAVID L. MAY,
Special Commissioner.

Nov. 16—3t.

All which is respectfully reported.

DAVID L. MAY,
Special Commissioner.

The exceptions above referred to are as follows:

Circuit Court of the United States, District of Kentucky.

MARC HUBBERT, Complainant,
vs.
TAYLOR COUNTY, Defendant.

Exceptions to Commissioner's Report.

The defendant, Taylor County, further excepts to the commissioner's report in this proceeding as a whole and to each and every part thereof; and for grounds it says:

1st. That the act of February 27th, 1882, upon which this proceeding is based is unconstitutional and void, because it was and is in conflict with article 1, sections 1 and 2, and article 2, section 30,

of the Kentucky constitution of 1850, in force at the time said act was passed, in that it attempts to vest in the judiciary and persons belonging to the judiciary department of the State the power to levy and collect taxes, a power the exercise of which is limited to the legislative department of same by said provisions of said constitution.

2nd. That so much of the contract between Taylor County and the purchaser of the bonds of Taylor county issued under the act of March 18th, 1878, as is contained in sections 3, 4, 5, 6, 7, 8 and 9 of the act of February 27th, 1882, providing a remedy for the collection of judgments rendered on said bonds and coupons issued therewith was and is void; because the same is in violation of the provisions of article I, secs. 1 and 2, and article 2, section 30, of the Kentucky constitution of 1850, in force at the time said act of 1882 was passed and said contracts were made.

97 3rd. That the provisions contained in section 10 of the act of February 27th, 1882, are by said act made conditions precedent to the right of the parties who have secured judgments on bonds and coupons issued by Taylor County under the provisions of the act of March 18th, 1878, to avail themselves of the remedy provided for in the said act of 1882, and the bonds issued pursuant to said act of 1878, on their face do not stipulate that the holders of any of them or any of the coupons thereof shall be entitled to the remedies for the collection of same as provided for in said act and as is required by said provisions of said section.

TAYLOR COUNTY, *By Att'y.*

The demurrer above referred to is as follows:

United States Circuit Court, District of Kentucky.

MARC HUBBERT, Plaintiff,
vs.
TAYLOR COUNTY, Defendant.

General and Special Demurrer.

The defendant, Taylor County, demurs to the proceedings herein to levy a tax on the taxable property of the citizens of said county to satisfy plaintiff's judgment and for grounds of its demurrer it says:

1st. That this court has no jurisdiction to levy a tax upon the property of said county or its citizens for said purpose.

2nd. That the act of Feb. 27th, 1882, which purports to confer such authority is unconstitutional and void and confers no such authority, jurisdiction or power for the reason that it is in violation of the provisions of article 1, sections 1 and 2, of the Kentucky constitution of 1850, in force at the time said act was passed. Upon all of which it prays the judgment of the court.

TAYLOR COUNTY, *By Att'y.*

The affiant, J. W. Cloyd, says he is judge of Taylor county, and that the statements made in the foregoing demurrer are true as he verily believes.

J. W. CLOYD,
Judge Taylor County Court.

98 Subscribed and sworn to before me by J. W. Cloyd, this Jan. 11th, 1901.

THOS. E. GREENE,
Clerk Taylor Circuit Court.

And on the 28th day of May, 1901, the following motion and order were entered:

Circuit Court of the United States, District of Kentucky.

MARK HUBBERT, Plaintiff,
vs.
TAYLOR COUNTY, Defendant. } Motion and Order.

This day came the Campbellsville Lumber Co., by Ernest Macpherson, its attorney, and filed herein notice accepted by the attorneys for the plaintiff in the above-entitled cause, and moved the court to set aside the judgment entered or made in the above-entitled cause on January 12, 1901, against the Campbellsville Lumber Company.

The said defendant further moved the court to recall and quash the execution of *fieri facias* issued against the Campbellsville Lum- Company in said cause on the said judgment of January 12th, 1901, which execution was issued April 23, 1901, and is now in the hands of the marshal of the United States court for the district of Kentucky.

Said defendant filed in support of both of said motions the affidavit of U. P. Walling and of Ernest Macpherson, and an attested copy of said execution.

To said motions, plaintiff, appearing by counsel in open court objected.

The court being fully advised of the said motions it is ordered that said motions be and each of them be and they are hereby overruled, to which the said defendant excepts. It is ordered that said defendant do have until June 1st, 1901, to prepare and file a bill of exceptions herein.

99 And on the 1st day of June, 1901, came the defendant The Campbellsville Lumber Company, by Ernest Macpherson, its attorney, and tendered its bill of exceptions herein, which is signed and sealed by the court and ordered to be filed, and made part of the record, and which is as follows:

United States Circuit Court, Kentucky District.

MARC HUBBERT, Plaintiff,
vs.
TAYLOR COUNTY, Defendant.

Bill of Exceptions.

Be it remembered that on the 28th day of May, 1901, before the Honorable Walter Evans, district judge of Kentucky, sitting in and holding the above-entitled circuit court, the above-entitled action came on regularly to be heard on the motions of the Campbellsville Lumber Company to set aside the judgment rendered herein against it on the 12th day of January, 1901, and that the court recall and quash the execution issued thereon, against said company on the 23rd day of April, 1901. Messrs. Harris & Marshall, appearing as attorneys for the plaintiff and Ernest Macpherson appearing as attorney for the Campbellsville Lumber Company.

The said plaintiff by his said attorneys objected to each of said motions.

Thereupon the Campbellsville Lumber Company aforesaid, in support of said motions read the following affidavits:

Affidavit of U. P. Walling.

Circuit Court of the United States, District of Kentucky.

MARC HUBBERT, Plaintiff,
vs.
TAYLOR COUNTY, Defendant. } Affidavit.

The affiant, U. P. Walling, says he is the secretary and treasurer and chief officer in Kentucky of the Campbellsville Lumber Company and that the said lumber company is one of the per-
100 sons against whom an execution has been issued in this cause; that the said execution is for the sum of one hundred and twenty-three dollars and seventy-six cents ($125.76), with costs thereon amounting to one dollar and twenty-five cents ($1.25).

That neither the Campbellsville Lumber Company nor this affiant ever had any knowledge of, or notice of the said judgment or execution until and not before thirty-four (34) days prior to the date of this affidavit; that the said lumber company had no opportunity to defend in the above-entitled cause.

That it has a complete defense thereto on the merits and that it does not owe and never owed to any creditor of Taylor County the sum of one hundred and twenty-three dollars and seventy-six cents ($123.76) or any sum; that the report of the commissioner herein filed is grossly inaccurate, and the assessment made upon said lumber company, as appears from the face of said report, and the judg-

ment thereon is grossly excessive, even if any sum could be assessed, levied or collected against the taxpayers of Taylor county in which the said company does business.

That from the report of said commissioner are omitted the names of many good and lawful taxpayers of said county.

That affiant is informed, believes and states that one of the bonds or coupons, a copy of one of which being filed herewith as part hereof marked A, in any way sued on by Marc Hubbert, even contained any stipulation that the holder or owner thereof was entitled to any remedy under any law against the taxpayers or owners of property in Taylor county, and did not contain the stipulation provided for in section 10 of the pretended act of the General Assembly of the Commonwealth of Kentucky, entitled An act to amend an act entitled "An act for the benefit of Taylor county empowering it to compromise its debts, issue bonds and levy and collect taxes to pay the same," approved March 18, 1880 (which was a mistake in the date), and which act was approved February 27, 1882.

That affiant is informed and believes and states that the plaintiff, Marc Hubbert, at the time of the institution of said suit was not a *bona fide* holder or owner of the coupons or bonds upon which he obtained judgment and that he was selected by the bondholders or owners of said bonds and coupons, they being residents of the State of Kentucky, for the purpose, by a fictitious transfer to him, of obtaining jurisdiction in a Federal court in Kentucky and this honorable court.

101 That the pretended and void act of the General Assembly of the Commonwealth of Kentucky, approved February 27th, 1882, which is chapter 306 of the acts of the General Assembly published in the Acts of 1881, volume 1, at page 558, and hereinbefore mentioned, was repealed and was not in force when the pretended judgment, levy, assessment or proceeding or execution herein were had, made, done or issued against the said lumber company.

That said repeal was caused and effected by the people of the State of Kentucky, in the adoption of their last constitution, in section 59, subsections 1 and 15 thereof, and the schedule of said constitution in section 1 thereof, and also by the general law enacted by the General Assembly of the Commonwealth of Kentucky, in sections 7 and 8 thereof, approved October 17, 1892, which last-mentioned sections also appear as sections 1839 and 1840 of the Kentucky Statutes.

That notwithstanding said repeal the plaintiff Marc Hubbert, if the legal holder or owner of the bonds or coupons by him herein sued on, was nevertheless and left by the laws of Kentucky in possession of and having a right to a complete, adequate and perfect remedy thereunder, to wit, the general laws of the Commonwealth of Kentucky, known as the code of civil practice, and the practice rules and laws governing the courts of the United States; and the writ of mandamus compelling officers having duties in connection with the levy and collection of taxes in said Taylor county to perform their duties under the laws applicable in the premises.

That affiant is informed and states that the plaintiff, Marc Hub-

bert never applied to any of the officers of Taylor county, who, by law, are concerned in the levying, assessment and collection of taxes, to perform any duty whatever upon them by law enjoined or for his benefit, and never made any demand upon any officer of Taylor county, to perform any duty upon said officer enjoined by law or for the benefit of said Marc Hubbert in any way.

That the judgment herein rendered without notice and without any process against the Campbellsville Lumber Company is absolutely void.

U. P. WALLING.

Subscribed and sworn to before me by U. P. Walling, this May 24th, 1901.

[SEAL.] HENRY R. TURNER,
N. P., Taylor County.

My commission expires on the 1 day of Jan'y, 1902.

102 The exhibit above referred to is as follows:

UNITED STATES OF AMERICA, *State of Kentucky.*

No. 200. $50.

For funding the Cumberland and Ohio Railroad bonds.

Twenty years after date, with the option reserved to pay at any time after one year, from date, upon thirty days' notice given in a newspaper published in the city of Louisville, Ky., the County of Taylor, in the State of Kentucky, for value received, promises to pay to bearer at the Bank of Kentucky, in the city of Louisville, Ky., the sum of fifty dollars, with interest thereon at the rate of six per cent. per annum payable semi-annually at the said bank, upon presentation of the proper coupons, hereto attached. This bond is one of an issue amounting in all to one hundred and twenty-five thousand dollars, authorized by an act of the General Assembly of the Commonwealth of Kentucky, approved March 18th, 1878.

In witness whereof, the County of Taylor, has caused this bond to be signed by the judge and clerk of the county and the seal of the county to be impressed hereon and the coupons to be signed by the clerk of the county this first day of October, 1887.

——— ———,
Judge County Court.

——— ———,
Clerk County Court.

Written across face: $50.

$1.50. The County of Taylor, State of Kentucky, will pay bearer one dollar and fifty cents, on the first day of April, 1906, at the Bank of Kentucky, in the city of Louisville, Ky., being interest for six months on bond No. 200.

A. T. CAMPBELL,
County Clerk. 37.

$1.50. The County of Taylor, State of Kentucky, will pay bearer one dollar and fifty cents, on the first day of Oct., 1906, at the Bank of Kentucky in the city of Louisville, Ky., being interest for six months on bond No. 200.

A. T. CAMPBELL,
County Clerk. 38.

$1.50. The County of Taylor, State of Kentucky, will pay bearer one dollar and fifty cents, on the first day of April, 1907, at the Bank of Kentucky, in the city of Louisville, Ky., being interest for six months on bond No. 200.

A. T. CAMPBELL,
County Clerk. 39.

103 $1.50. The County of Taylor, State of Kentucky, will pay bearer one dollar and fifty cents, on the first day of Oct., 1907, at the Bank of Kentucky, in the city of Louisville, Ky., being interest for six months on bond No. 200.

A. T. CAMPBELL,
County Clerk. 40.

(Endorsed:) State of Kentucky, Taylor county, bond No. 200 $50. Issued by authority of an act of the General Assembly of the State of Kentucky, approved March 18, 1878.

The Affidavit of Ernest Macpherson.

Circuit Court of the United States, District of Kentucky.

MARK HUBBERT, Plaintiff,
vs.
TAYLOR COUNTY, Defendant. } Affidavit.

The affiant, Ernest Macpherson, states that he has been for years a practicing attorney at this bar; that never until recently has he represented or been in any way connected with the Campbellsville Lumber Company, his client upon the present motion; that he knows that if it were desired, or ever had been desired in this case to serve any process upon the Campbellsville Lumber Co., which is a corporation organized and existing under the laws of Kentucky, and doing business in Taylor county, it would have been an easy matter to give to said company notice or serve process upon it.

Affiant further says that the costs, which the marshal is directed by said court to collect from said defendant, are and amount to the sum of one and $\frac{25}{100}$ dollars ($1.25).

Affiant further says ten executions have been issued herein against persons named in the commissioner's report and in the judgment herein, and one of said executions has been quashed by order of this court, to wit, the execution against Louisville & Nashville Railroad Company.

ERNEST MACPHERSON.

Subscribed and sworn to before me this 28th day of May, 1901.

HENRY F. CASSIN,
U. S. Com'r.

104 And read an attested copy of the execution aforesaid:

The President of the United States of America to the marshal of the Kentucky district, Greeting:

You are hereby commanded, that of the estate of the Campbellsville Lumber Company you cause to be made the sum of one hundred and twenty-three and $\frac{75}{100}$ dollars, which Marc Hubbert lately in our circuit court of the United States of America, in the district of Kentucky, sitting in Louisville, recovered against it for debt and also the sum of $1.25 which was adjudged the said Marc Hubbert, for his costs, by him in that behalf expended, whereof the said Campbellsville Lumber Company is convict, as appears to us of record, and that you have the same before the judges of our said circuit court of the United States for the district of Kentucky, at Louisville, on the first Monday in June, next, to render unto the said Hubbert, his debt, and costs aforesaid, and have then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Louisville, in the said district, this 23rd day of April, in the year of our Lord 1901, and of our Independence the 125th.

[L. S.] THOS. SPEED,
C. C. C., K. D.,
By HENRY F. CASSIN, *Deputy.*

A copy.
Attest: THOS. SPEED, *Clerk.*

And the Affidavit of Marc Hubbert, Filed Herein on the 13th Day of July, 1900.

Circuit Court of the United States for the District of Kentucky.

MARC HUBBERT, Plaintiff,
vs.
TAYLOR COUNTY, Defendant. } Affidavit. No. 6716.

Affiant, Marc Hubbert, says that he is the complainant in this cause in which judgment was rendered in his favor at the special term held in May, 1899. Affiant says that execution was issued upon said judgment, and was returned no property found, and that no part of it has ever been paid, and no effort made to pay it by Taylor County or by any of its citizens.

105 Affiant says that the public sentiment of the citizens of Taylor county is so hostile to the payment of the bonded debt of the county of which the judgment in affiant's favor forms a part that such serious obstruction is likely to be afforded to the

enforcement of such judgment as will materially delay its collection.

Affiant says that the opposition to the payment of the debt in the county is so great that for several years past no person has been found willing to qualify as sheriff, and there is now no sheriff of the county. He says that for the years 1896 and 1897, a levy has been made by the county court of a tax to pay the interest on the bonds referred to in the petition in this case, but there being no sheriff, and none of the citizens being willing to pay the tax, no money has been collected for that purpose.

MARC HUBBERT.

Subscribed and sworn to by Marc Hubbert, before me this 10th day of July, 1900.

My commission expires Dec. 29, 1903.

[SEAL.] JOHN W. KNIGHT,
Notary Public, Cook County, Illinois.

(1 ten-cent stamp.)

And the report of David L. May, commissioner, filed herein January 12th, 1901, as follows:

Circuit Court of the United States for the District of Kentucky.

MARC HUBBERT, Complainant,
vs.
TAYLOR COUNTY, Defendant.

Report of D. L. May, Special Commissioner.

This cause coming on to be heard on plaintiff's motion to refer this case to a commissioner, and on the affidavit filed in support thereof, and having been argued by counsel for the plaintiff and for Taylor County, the court is of opinion and finds that such serious obstruction is likely to be offered to the enforcement of the judgment herein as will materially delay it. It is therefore considered

106 that plaintiff's motion be and the same is hereby sustained, and that David L. May be and he is hereby appointed commissioner to whom this case is referred, with instructions to ascertain and report on or before the 30th day of July next, the amount which it will be necessary for the holders or owners of all real and personal property in Taylor county, subject to taxation under the revenue laws of the State of Kentucky, to pay in order to raise promptly in proportion to the value of such property owned by each, a sum sufficient to pay the judgment herein and all the costs of this suit, and the costs of collecting the same, making all due allowance for probable delinquencies and the officers of Taylor county having charge of the books containing the last assessment for the purposes of State taxation, are required to deliver them to the said commissioner to be by him used in making out his report.

Pursuant to the above order, I respectfully report the following:

I have examined the last assessment for Taylor county as is shown by the assessor's books in the office of the county court clerk, and find that it will be necessary to collect one dollar and forty cents ($1.40) on the one hundred dollars ($100.00) of the taxable property as shown by the said assessment to pay the judgment, interest and cost in this action. This estimate is made after making due allowance for delinquencies which will necessarily be larger than usual by reason of the opposition of the people to the payment of the bonded debt, and the difficulty of finding the personal property.

A statement showing the name of each property-owner, with a description of the property, the value thereof, and the amount that will be necessary to collect from each, is attached hereto and made a part of this report, marked "Exhibit A."

This list embraces all the taxpayers of Taylor county, except such as have paid their proportion of the bonded debt according to the provisions of section 8 of the act of March 18, 1878.

Respectfully submitted,

DAVID L. MAY,
Special Commissioner.

Exhibit "A" filed herewith has heretofore been copied on page 27 of this record.

The foregoing were all affidavits and executions and reports not already part of the record read by the Campbellsville Lum-
107 ber Company on the hearing of said motions, and concluded all the testimony in the case of said motions. Both parties rested and the motions were argued to the court, by counsel for the respective parties thereto, to wit: Marc Hubbert and the Campbellsville Lumber Company, and after the said argument, the court overruled each of said motions.

To each of which said rulings of the court counsel for the Campbellsville Lumber Company then and there duly excepted, and hereby tenders this, its bill of exceptions, which it prays the court to settle, sign and seal.

And now in furtherance of justice, and that right may be done in accordance with said prayer and tender, said bill of exceptions is, by the court, settled, allowed, signed and certified in open court, and is made a part of the record herein on this 1st day of June, 1901.

WALTER EVANS, *Judge.*

No objection to the bill.

W. O. HARRIS.

And on the 22nd day of June, 1901, came the defendant, The Campbellsville Lumber Company, by Ernest Macpherson, its attorney, and filed its petition for a writ of error and assignment of errors herein. Thereupon on motion of said defendant, it is ordered that a writ of error be allowed upon condition that the defendant do execute a supersedeas bond in the penalty of five hundred dollars, con-

ditioned according to law. Thereupon the said defendant filed its supersedeas bond with the United States Fidelity & Guaranty Company as surety, which bond is approved.

United States Circuit Court for the District of Kentucky.

MARC HUBBERT, Plaintiff,
vs.
TAYLOR COUNTY, Defendant.

Petition for Writ of Error and Supersedeas.

The Campbellsville Lumber Company, ruled to be a defendant in the above-entitled cause, feeling itself aggrieved by the judgment of the court rendered and made therein of the 12th day of
108 January, 1901, and the orders and judgment of the court entered and made in said cause overruling the motions made by the Campbellsville Lumber Company, on the 28th day of May, 1901, comes now by Ernest Macpherson, its attorney, and petitions said court for an order allowing said Campbellsville Lumber Company to prosecute a writ of error to the honorable the United States circuit court of appeals for the sixth circuit, under and according to the laws of the United States in that behalf made and provided, and files its assignment of errors herein, and also petitions that an order be made, fixing the amount of security which the Campbellsville Lumber Company shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this court be suspended and stayed until the determination of said writ of error by the United States circuit court of appeals for the sixth circuit.

And your petitioner will ever pray.

ERNEST MACPHERSON,
Attorney for the Campbellsville Lumber Company.

United States Circuit Court for the District of Kentucky.

MARC HUBBERT, Plaintiff,
vs.
TAYLOR COUNTY, Defendant.

Assignment of Errors.

Comes now the Campbellsville Lumber Company, by Ernest Macpherson, its attorney, and files herein the following assignment of errors upon which it will rely:

I.

That the circuit court of the United States for the district of Kentucky erred in holding that it had jurisdiction of the Campbellsville Lumber Company for any purpose in the above-entitled cause.

II.

That the said court erred in overruling, on May 28th, 1901,
109 the motion of the Campbellsville Lumber Company to set aside the judgment rendered on January 12, 1901, against it in the above-entitled cause, and in holding that said judgment was not void, notwithstanding no summons or other process was served or issued against the Campbellsville Lumber Company prior to said judgment.

III.

That the said court erred in overruling the motion of the Campbellsville Lumber Company made on the 28th day of May, 1901, to recall and quash the execution issued in the above-entitled cause against said company on the 23rd day of April, 1901, and in holding that no actual notice or service of summons, or other process was necessary to be given to the Campbellsville Lumber Company before said execution, and in holding that it was immaterial whether or not the amount for which said execution was issued against the Campbellsville Lumber Company was or was not grossly excessive, or levied or assessed without regard to the proportion of the property of the Campbellsville Lumber Company owned or held by it in Taylor county, as compared or considered with reference to the property of other taxpayers or owners of property in said county.

IV.

That the said court erred in rendering a judgment against the Campbellsville Lumber Company on the 12th day of January, 1901, in the above-entitled cause to which it was not a party, without any actual notice thereof, or of this cause or proceeding, prior to said date, and until long thereafter.

V.

That the said court erred in holding that the act of the General Assembly of the Commonwealth of Kentucky, entitled A act to amend an act entitled "An act for the benefit of Taylor county, empowering it to compromise its debts, issue bonds and levy and collect taxes to pay the same, approved March, 1878," which act was approved February 27th, 1882, was not in violation of the 5th and 14th amendments to the Constitution of the United States.

VI.

That the said court erred in holding that the act of the General Assembly of the Commonwealth of Kentucky, entitled An act to amend an act entitled "An act for the benefit of Taylor county,
empowering it to compromise its debts, issue bonds and levy
110 and collect taxes to pay the same, approved March, 1878," which act was approved on February 27th, 1882, was not

repealed and of no force prior to the institution of the above-entitled cause.

VII.

That the said court erred in holding that the act of the General Assembly of the Commonwealth of Kentucky, entitled An act to amend an act entitled "An act for the benefit of Taylor county, empowering it to compromise its debts, issue bonds and levy and collect taxes to pay the same, approved March, 1878," which act was approved February 27, 1882, even if valid could be availed of by the plaintiff, Marc Hubbert, or any other owner or holder of the bonds or coupons of Taylor county, which did not contain the stipulation commanded in and provided for by section 10 of said act.

Wherefore, the Campbellsville Lumber Company prays that the judgment of said court and all orders therein made against it be reversed and such directions be given that full force and efficacy may inure to the Campbellsville Lumber Company by reason of the claims, contentions and defenses set up in the aforesaid cause by it and in the record of said cause appearing.

ERNEST MACPHERSON,
Attorney for the Campbellsville Lumber Co.

Circuit Court of the United States, District of Kentucky.

MARC HUBBERT
vs.
TAYLOR COUNTY ET AL.

Know all men by these presents, that we, Campbellsville Lumber Company, principal, and The United States Fidelity & Guaranty Co., of Baltimore, Maryland, are held and firmly bound unto Marc Hubbert in the sum of five hundred dollars, to be paid to the said Marc Hubbert executors or administrators. To which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our, and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this tenth day of June, A. D. 1901.

111 Whereas, the above-named Campbellsville Lumber Company hath prosecuted an writ of error to the United States circuit court of appeals for the sixth circuit to reverse the judgment rendered in the above-entitled suit, by the circuit court of the United States, for the district of Kentucky, at Louisville. Now, therefore, the condition of this obligation is such that if the above-named Campbellsville Lumber Company shall prosecute its said writ of error to effect, and answer all damages and costs, if it shall fail

to make good its plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

THE CAMPBELLSVILLE LUMBER COMPANY, [L. S.]
By ERNEST MACPHERSON, *Attorney.*
THE UNITED STATES FIDELITY & GUARANTY CO.
THOMAS S. DUGAN,
Gen. Ag't & Att'y-in-fact. [L. S.]

Sealed and delivered in presence of
HENRY F. CASSIN,
Deputy Clerk U. S. Courts.

DISTRICT OF KENTUCKY, *ss:*

I, Thomas Speed, clerk of the United States circuit court for the district of Kentucky, at Louisville, do hereby certify that the foregoing 117 pages contain a true and correct transcript of the record and proceedings in the case of Marc Hubbert *vs.* Taylor County *et al.*, as the same appears from the files and records in my said office.

Witness my hand and seal of said court this 28th day of June, A. D. 1901.

[SEAL.]

THOS. SPEED, *Clerk,*
By HENRY F. CASSIN, *D. C.*

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the district of Kentucky, Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court
112 before you, or some of you, between The Campbellsville Lumber Company, plaintiff in error, and Marc Hubbert, defendant in error, a manifest error hath happened to the great damage of the said, The Campbellsville Lumber Company, plaintiff in error, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal *directly* and openly you send the record and proceedings aforesaid with all things concerning the same to the United States circuit court of appeals for the sixth circuit, together with this writ, so that you have the same at the city of Cincinnati, in the State of Ohio, on the 20th day of July next in the said circuit court of appeals, to be then and there held that the record and proceedings aforesaid, being inspected, the said circuit court of appeals

may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 22nd day of June, in the year of our Lord one thousand nine hundred and one.

THOS. SPEED,
Clerk U. S. Circuit Court, Ky. District,
By HENRY F. CASSIN,
Deputy Clerk.

[SEAL.]

Allowed by:
WALTER EVANS,
United States District Judge,
Presiding in the said Circuit Court.

Service of within writ of error and receipt of a copy thereof is hereby admitted this — day of June, 1901.

HARRIS & MARSHALL,
For Hubbert.

Filed June 22nd, 1901.

THOS. SPEED, *Clerk,*
By HENRY F. CASSIN, *D. C.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Marc Hubbert, Greeting:

You are hereby cited and admonished to be and appear at the United States circuit court of appeals, for the sixth circuit to be held at the city of Cincinnati, in the State of Ohio, not exceeding thirty (30) days from the date of this writ, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Kentucky, wherein The Campbellsville Lumber Company is plaintiff and you, Marc Hubbert, defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

113 & 114

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 22nd day of June, A. D. 1901, and of the Independence of the United States the 125th.

[SEAL.]

WALTER EVANS,
United States District Judge, Presiding in the Circuit Court Aforesaid.

Notice and service of the above citation is hereby waived.

HARRIS & MARSHALL,
Attorneys for Marc Hubbert.

No. 6716. Marc Hubbert *vs.* Taylor Co. *et al.* Citation of Campbellsville Lumber Co. to Marc Hubbert.

115 And afterwards, to wit, on July 17th, 1901, præcipe for appearance of counsel was filed, clothed in the words and figures as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

CAMPBELLSVILLE LUMBER CO. vs. MARC HUBBERT. } No. 994. October Term, 1900.

To the clerk of said court:

Please enter my appearance as counsel for the plaintiff in error.
ERNEST MACPHERSON.

NOTE.—Must be signed by a member of the bar of Supreme Court of the United States or of any circuit court of the United States, and by individual (not firm) name.

And afterwards, to wit, on December 20th, 1901, an entry was made upon the journal of said court in said cause which reads and is as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

CAMPBELLSVILLE LUMBER CO. vs. MARC HUBBERT.

Before Lurton, Day, and Wanty, JJ.

This cause is submitted without oral argument on printed briefs.

And afterwards, to wit, on January 7th, 1902, judgment was rendered in said cause which is in the words and figures as follows:

116 *Judgment.*

United States Circuit Court of Appeals for the Sixth Circuit.

CAMPBELLSVILLE LUMBER CO. vs. MARC HUBBERT. } No. 994.

Error to the circuit court of the United States for the western district of Kentucky.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the western district of Kentucky, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said circuit court, in this

cause be and the same is hereby reversed with costs and remanded with directions to set aside the judgment against the plaintiff in error.

And afterwards, to wit, on January 25th, 1902, an opinion was filed in said cause which reads and is as follows:

Opinion.

United States Circuit Court of Appeals, Sixth Circuit.

CAMPBELLSVILLE LUMBER CO., Plaintiff in Error,
vs.
MARC HUBBERT, Defendant in Error. } No. 994.

Error to the circuit court of the United States for the western district of Kentucky.

Submitted Dec. 20, 1901; decided Jan. 7, 1902.

Before Lurton and Day, circuit judges, and Wanty, district judge.

Marc Hubbert, the defendant in error, recovered a judgment in the court below against the County of Taylor, one of the counties of the State of Kentucky, upon matured interest coupons issued by the county.

117 An execution upon this judgment was returned no property found. The judgment plaintiff thereupon sought to avail himself of the extraordinary remedy provided by an act of the Kentucky legislature approved Feb. 27, 1882.

The act referred to is an amendment of an act approved March 18, 1878, being a special act for the benefit of Taylor county. By the original act the county was authorized to issue new bonds in settlement and compromise of its existing indebtedness on terms therein named, and provided, that if the county should refuse to levy and collect a tax to pay any judgment upon the compromise bonds or coupons after due notice and demand, it should be the duty of the "circuit court," or, in vacation, of the "circuit judge of the seventh judicial circuit," to make an order based on the last preceding assessment, "levying a tax and appointing a collector, whose duty it shall be to collect from the taxpayers of Taylor county sufficient to pay off such judgment," etc.

This act was so amended by the act of February 27, 1882, as to provide, among other things:

1st. That any judgment on bonds or coupons issued under the act should constitute "a lien upon all real and personal property in said county, subject to taxation under the revenue laws of this Commonwealth."

2d. "That if the court rendering such judgment shall be of opinion that such serious obstruction is likely to be offered to the enforcement of any such judgment as will materially delay it, it

shall, on motion of the plaintiff therein, refer the same to a commissioner, with instructions to ascertain and report, on a day to be named, the amount which it will be necessary for the holder or owners of any such property to pay in order to raise promptly, in proportion to the value of such property owned by each, a sum sufficient to pay the said judgment, and all costs of the said suit, and the costs of collecting the same, making due allowance for probable delinquencies."

By section 5 of this amended act, the commissioner is directed to file his report "in the clerk's office of said court and publish in a newspaper in Taylor county or Marion county, once each week for three weeks, a notice of the filing of said report, and stating that the same will be subject to exceptions, to be filed in said clerk's office until a day to be mentioned in said notice, which day shall not be less than thirty nor more than forty days from the last day on which the said notice is to be published."

118 The 6th and 7th sections provide for a hearing on exceptions so filed, and that, upon the approval of the report, "judgment shall be rendered against the parties named in the report for the amounts therein named, and at the expiration of ninety days from the date of said judgment several executions shall issue against all persons who have not then paid to the sheriff or other officer who collects executions from said court, for the sums adjudged to be due them respectively," etc.

The 8th section provides that any surplus resulting after paying judgment and costs shall be paid over "to the commissioner of the sinking fund of said county to be used for the payment of the principal and interest of bonds issued under the act," etc.

The 10th and last section of the act is in these words:

"The bonds to be issued under the act to which this is an amendment, shall, on their face, stipulate that the holders of any of them, or any coupon thereof, shall be entitled to the remedies for the collection for the same herein, and in the act to which this is an amendment, provided for."

To bring himself within the terms of this act the defendant in error filed an affidavit, in which he stated the issuance and return of an execution, the non-payment of his judgment and that "the public sentiment of the citizens of Taylor county is so hostile to the payment of the bonded debt of the county of which the judgment in affiant's favor forms a part that such serious obstruction is likely to be afforded to the enforcement of such judgment as will materially delay its collection."

It was further affirmed that the opposition to the payment of the county debt was so great that for several years past no person had been found willing to qualify as sheriff, and that though the county court had levied a tax for the years 1896 and 1897, "to pay the interest on the bonds referred to in the petition in this case," that the tax had not been collected because there was no sheriff.

Upon this petition a commissioner was appointed who filed a report, setting out a list of some 2,000 taxpayers and the amount which each should pay. Notice was published, as required, of the

filing of this report, and that it would remain open for exception thirty days after last publication. The county alone filed exceptions, all of which were overruled.

Judgments were, thereupon, rendered against the several taxpayers and executions issued.

The judgment against the plaintiff in error was rendered
119 on this report January 12, 1901, and execution issued April 23, 1901, for $123.76 and costs, as the proportional sum to be paid by the plaintiff in error.

Upon the issuance of this execution the plaintiff in error appeared and moved the court to set aside the judgment against it, and to quash the execution.

These motions were predicated upon many objections, principal among them being:

First. That the act of 1882, under which the plaintiff had proceeded, was void under the constitution of Kentucky and of the United States, in so far as it gave power to any court to levy and assess and collect a tax or render a personal judgment against taxpayers of Taylor county upon a county debt, without notice or summons.

Second. That said act of 1882 had been repealed.

Third. That the remedy offered by the act of 1882 was not applicable to or enforceable by a United States court.

Fourth. That the commissioner had not made a proportional assessment of liability, but had grossly discriminated against the plaintiff in error.

Fifth. That the aggregate amount reported payable was more than five times the amount of the plaintiff's judgment and costs, and, therefore, a gross abuse of power and unwarranted by the law.

Sixth. That the plaintiff had not shown himself entitled to the extraordinary remedies extended by the act of 1882, inasmuch as it did not appear that the bonds from which the coupons in judgment had been detached, did "on their face," stipulate that the holders * * * "shall be entitled to the remedies for the collection — the same herein * * * provided for."

The motions were supported by affidavits. From these affidavits it appears that the bonds held by plaintiff were in these words:

"UNITED STATES OF AMERICA, *State of Kentucky.*

"No. 200. $50.00.

"For funding the Cumberland and Ohio Railroad bonds.

"Twenty years after date, with the option reserved to pay at any time after one year, from date, upon thirty days' notice given in a newspaper published in the city of Louisville, Ky., the County of Taylor, in the State of Kentucky, for value received, promises to pay to bearer at the Bank of Kentucky, in the city of Louisville, Ky., the sum of fifty dollars, with interest thereon at the rate of six

per cent. per annum, payable semi-annually at the said bank,
120 upon presentation of the proper coupons hereto attached.
This bond is one of an issue amounting in all to one hundred and twenty-five thousand dollars, authorized by an act of the General Assembly of the Commonwealth of Kentucky, approved March 18, 1878.

"In witness whereof, the County of Taylor has caused this bond to be signed by the judge and clerk of the county, and the seal of the county to be impressed hereon, and the coupons to be signed by the clerk of the county, this first day of October, 1887.

"(Signed) ——— ———,
Judge County Court.

"(Signed) ——— ———,
Clerk County Court."

Written across face: $50.00.

The motions were denied. A bill of exceptions was allowed, and a writ of error from the judgment in favor of Marc Hubbert against the Campbellsville Lumber Company, and from the judgment refusing to set aside said judgment and refusing to quash the execution, was allowed.

LURTON, circuit judge, after making the foregoing statement of the case, delivered the opinion of the court.

1. For the purposes of this case we may assume that the legislature of Kentucky did not exceed its constitutional powers in providing the very stringent remedies found in the act approved March 18, 1878, and the law amending that act approved Feb. 27, 1882. The power to impose a tax or raise money by general assessment for a public purpose is a very high attribute of sovereignty, and can only be exercised when authorized by express legislative authority. Supervisors *v.* Rodgers, 7 Wall. 175; Rees *v.* City of Watertown, 19 Wall. 107, 116; Heine *v.* Levee Comm., 19 Wall. 655; Thompson *v.* Allen County, 115 U. S. 550; McLean County *v.* Deposit Bank, 81 Ky. 254; Grand Rapids *v.* School Dist., 102 Ky. 556.

Even the power to appoint a collector to collect a tax lawfully assessed does not exist in a court unless expressly authorized by legislative authority. Thompson *v.* Allen County, 115 U. S. 550.

Nevertheless, when the legislature has deputed to a court the power in given circumstances to levy and collect a tax for the satisfaction of a judgment rendered by that court, the power has been exercised without question. Stansell *v.* Levee Board of Miss., 13 F. R. 846; Supervisors *v.* Rogers, 7 Wall. 175.

In the cases cited above the power was exercised by a
121 Federal court by virtue of a State statute, as a remedy which followed the debt and which might be enforced by a United States court in a case where Federal jurisdiction otherwise existed.

2. Neither are we prepared to say that there has not been due process of law in the opportunity afforded to appear and be heard by exceptions in pursuance of the publication required by the act.

The proceeding was in all its essentials a proceeding to assess and collect a tax through the special machinery provided by the act. Notice by publication and opportunity to appear and be heard is due process in proceedings of this nature. Lent *v.* Tillson, 140 U. S. 316, 326; Paulsen *v.* Portland, 149 U. S. 30, 40.

3. Objections which go only to irregularities in the report, such as discriminations between taxpayers, or an excessive amount, do not go to the validity of the judgment, and come too late for consideration after judgment.

4. The most serious objection to the validity of the judgments against individual taxpayers arises upon the effect and meaning of the 10th section of the act of 1882. That section is in these words:

"The bonds to be issued under the act to which this is an amendment, shall, on their face, stipulate that the holders of any of them, or any coupon thereof, shall be entitled to the remedies for the collection for the same herein, and in the act to which this is an amendment, provided for."

If that provision of the law is mandatory the defendant in error has not averred or shown a judgment on bonds or coupons containing such a stipulation, for neither his original petition, praying a judgment against the county, nor his auxiliary petition for the extraordinary remedy afforded by the act of 1882 contain any averment which would bring him within the terms of this section of the act.

On the contrary the plaintiff in error, in support of its motion to set aside the judgment against it, has affirmatively shown that the bonds issued subsequent to this act of 1882 contained no such stipulation.

We have already set out the form of the bonds from which the coupons in judgment come. This shows that the bonds, though issued in October, 1887, contain no recital other than that, "this bond is one of an issue amounting in all to one hundred and twenty-five thousand dollars, authorized by an act of the General Assembly of the Commonwealth of Kentucky, approved March 18, 1878."

122 For the defendant in error it is contended that the requirement of the 10th section is directory in its nature, and, therefore, immaterial whether it has been complied with or not.

"By directory provision," says Judge Cooley, "is meant that they are to be considered as giving directions which ought to be followed, but not so limiting the power in respect to which the directions are given that it cannot be effectually exercised without observing them." Cooley's Constitutional Limitations, star page 64.

Lord Penzance, in Howard *v.* Rodington, L. R. 2, P. div. 211, after commenting on the difficulty of gathering any rule from the cases, said:

"I believe, as far as any rule is concerned, you cannot safely go farther than that in each case you must look to the subject-matter, consider the importance of the provision to the general object intended to be secured by the act, and upon a review of the case in

that aspect decide whether the enactment is what is called imperative or directory."

Applying the general principles stated to the case in hand, we find this debatable provision to be a part of one of the most stringent and extraordinary acts which has come under our observation.

This appears in two respects:

1. A judgment on any bond or coupon is made a lien on all the taxable property of the county.

2. If the court rendering a judgment shall be of opinion that such serious obstruction is likely to be offered to the enforcement of any such judgment in the ordinary methods for collection of a judgment against a public municipality, or by the quite unusual power conferred under the law before this amendment, it is given power through a commissioner to make an assessment, in effect, upon all the taxpayers, and compel collection through individual judgments and executions of a sum sufficient to pay the judgment and all costs.

This extraordinary power of assessing and collecting a tax is one in its nature non-judicial. The courts in the absence of express legislative authority have steadily refused to undertake even the collection of a tax lawfully assessed by the taxing authority. Rees *v.* Watertown, 19 Wall. 116, 117; Thompson *v.* Allen County, 115 U. S. 550.

For the purpose of modifying the apparent stringency of this enactment it has been suggested that it has its prototype in the New England rule by which all taxpayers are liable *in solido* for certain municipal debts. But the New England rule had no common-law origin, and has never been copied elsewhere. It was a rule applicable only to a limited class of organizations feebly endowed with corporate life. Having no common fund to pay debts, and no mode being provided by which debts could be enforced through the imposition of a tax, there grew up the theory that the inhabitants were individually liable for such corporate debts. The scheme was crude and has found favor nowhere. Rees *v.* City of Watertown, 19 Wall. 107, 123; Russel *v.* Men of Devon, 2 Term. 667; Emerie *v.* Gilman, 10 Cal. 408; Cooley Const. Lim. x 246.

123

As observed by Judge Cooley, the principle of individual liability for a public debt is not at all applicable where the law makes provision "for compulsory taxation to satisfy any judgment recovered against the corporate body."

The law must then be regarded as a wide departure from ordinary methods for enforcing the payment of a judgment against a municipality already armed with full power to assess and collect a tax to meet its obligations. To the novel and summary character of the remedy provided by the act of 1882 must be added the fact that its operation must be attended with unusual harshness and extraordinary expense, growing out of the fact that separate judgments are provided for against taxpayers upon which separate executions

must go. Such an act should be strictly construed, and a case clearly made out before any relief should be extended thereunder.

In this general view of the act shall we be justified in assuming that the General Assembly intended that so stringent and expensive a remedy should be awarded to creditors unless their bonds show on their face in plain terms an agreement that this remedy shall be available? The provision that the bonds should, on their face, stipulate for the special remedies provided by the act authorizing them was at least a reasonable requirement. The purpose doubtless was to compel the authorities issuing them to recognize the fact that by such stipulation they were consenting to the special and stringent remedies of the act. By this remedy each tax-payer is to be subjected to the liability of having a judgment rendered against him personally for his proportion of the aggregate assessment made by the court rendering judgment against the county.

The clause of the act imposing this condition is in terms imperative. It reads: "The bonds to be issued under the act to
124 which this is an amendment shall, on their face, stipulate that the holders of any of them, or any coupon thereof, shall be entitled to the remedies for the collection for the same herein, and in the act to which this is an amendment, provided for."

Undoubtedly, shall is often used in a directory sense.

But the presumption always is that words used in a statute are used in their ordinary sense. If a different interpretation is sought it must rest upon something in the character of the legislation, or in the context, which will justify a different meaning.

But what is it that the provision requires shall be shown on the face of the bonds to be issued? The bonds "shall on their face, stipulate," etc. That is, the bonds "on their face" shall contain the stipulation that any holder shall be entitled to the benefit of the special and extraordinary remedies provided by the act. To stipulate is to make an agreement, to bargain, to contract, to settle terms, etc.

The provision then is that the bonds to be issued "shall, on their face," contain an agreement, bargain or contract that the holder shall have the benefit of the special, unusual and extraordinary remedies provided by the act as amended. It must be conceded that if the 10th section of the act had been omitted entirely that holders of bonds issued under the act of 1878 as amended by this act of 1882, would have been entitled to the remedies therein provided. But in view of this very peculiar and imperative provision, are holders of bonds, issued by authority of the act entitled to these novel and drastic remedies unless they exact bonds which do, on their face stipulate for them?

The answer in its last analysis must turn upon the legislative intent. Does it plainly appear that this requirement was one of mere form, and that the intent was that the creditor should be able to enforce the special remedies provided by the enabling act whether stipulated on the face of the bonds or not?

If this "stipulation" appeared on some part of the bond other than its face, we might well say the act was directory in respect to

that, and the setting out of the stipulation on some other part of the bond might be regarded as a substantial compliance.

But this stipulation nowhere appears, and the only suggestion is that the recital in the bonds that they are "authorized by an act of the General Assembly of the Commonwealth of Kentucky, approved March 18, 1878," operates to give to the holder all the remedies provided by the act referred to as well as those peculiar to the amending act.

125 We are not to be understood as casting doubt upon the validity of the bonds as evidence of a valid county indebtedness. No such question is here involved. We confine ourselves to the question as to whether a holder of bonds purporting to be issued under the act of March 18, 1878, is entitled to the special remedies provided by that act and the act of 1882 amending that act. Every purchaser of municipal bonds must take notice of the terms and conditions of the enabling act under which the bonds purport to have issued. Barnett *v.* Denison, 145 U. S. 135; Barnum *v.* Okolona, 148 U. S. 393.

When these bonds were issued the act of 1878 as amended, required that bonds issued under that act should show on their face the stipulation in question. These bonds did not comply with this provision and a purchaser must be held to become such with notice that they did not, in this respect, comply with the enabling act.

An attentive consideration of the principle of statutory construction here involved leads us to conclude that when a statute gives a new and unusual remedy, and directs how the right to the remedy is to be acquired or enjoyed, and how it is to be enforced, the act should be strictly construed, and the validity of all acts done under authority of such an act will depend upon a compliance with its terms. In respect to such acts the steps pointed out for the acquisition, preservation and enforcement of the remedies provided should be construed as mandatory rather than optional. Sutherland Stat. Const., secs. 454, 458, and cases cited; Atkins *v.* Kennon, 20 Wend., 241, 249; Davison *v.* Gill, 1 East. 64; French *v.* Edwards, 13 Wall. 506; Lyon *v.* Alley, 130 U. S. 177.

Counsel for defendant in error have cited Township, etc., *v.* Strong, 96 U. S. 271, and Supervisors *v.* Galbraith, 99 U. S. 214, as authority for their contention that this provision is directory.

In Township *v.* Strong the act authorizing issuance of the bonds involved, provided that the bonds should be payable in not less than five nor more than thirty years from date. Bonds were issued dated September 10, 1872, and made payable thirty years from October 15, 1872, with interest thereon from October 15, 1872. When actually delivered, did not appear.

As they were payable in thirty years from the time they began to bear interest they were practically thirty-year bonds. "Their legal effect," said the court, "is precisely what it would have been had the date inserted been October 15th, instead of September 10, 1872. Substantially the legislative direction was followed."

126 In Supervisors *v.* Galbraith, the departure from the directions of the authorizing act was even more immaterial. The act said the bonds should be made payable to "the railroad company and assigns." The bonds were made payable to the railroad company "or bearer." The provision was held to be one of form which had been substantially complied with.

Barnett *v.* Denison, 145 U. S. 135, and Barnum *v.* Okolona, 148 U. S. 393, are cases in which a departure from material directions of the act authorizing the bonds was held fatal. In Barnett *v.* Denison, the charter of the city required that bonds issued by it should specify for what purpose they were issued.

The bonds issued referred, on their face, to an ordinance as authorizing their issuance, but did not give its title or contents, and did not otherwise state the "purpose" for which they had been issued.

The court held the recitals did not satisfy the law so as to protect an innocent holder from defences which might otherwise have been made.

In City of Cadillac *v.* Woonsocket Institution for Savings, 7 C. C. A. 574, and Gladstone *v.* Throop, 18 C. C. A. 61, we had occasion to distinguish Barnett *v.* Denison. In Barnum *v.* Okolona, bonds were involved which were issued under an act which prescribed that they should not extend beyond ten years from the date of issuance. The bonds as issued were made payable seventeen years after date. They were held void, the court holding that there was no authority to issue bonds except subject to the restrictions named in the enabling act.

The conclusion we reach is, that the plaintiff below did not bring himself within the special conditions of the act of 1882, and that the judgment against the plaintiff in error was, therefore, wholly unauthorized and void. The judgment is accordingly reversed with costs.

127 And afterwards, to wit: on February 7th, 1902, a petition for rehearing was filed which is in the words and figures as follows:

Petition for Rehearing.

United States Circuit Court of Appeals, Sixth Circuit.

CAMPBELLSVILLE LUMBER CO., Plaintiff in Error,
versus
MARC HUBBERT, Defendant in Error. } No. 994.

Petition for rehearing.

Harris & Marshall, for defendant in error.
Filed Feb. 7, 1902.

FRANK O. LOVELAND, *Clerk.*

United States Circuit Court of Appeals, Sixth Circuit.

CAMPBELLSVILLE LUMBER CO., Plaintiff in Error,
versus
MARC HUBBERT, Defendant in Error. } No. 994.

Petition for Rehearing.

In this case a judgment was rendered against the County of Taylor for $2,963.13 on coupons cut from county bonds, which judgment has never been called in question in any way.

The act under which the bonds were issued provided for a proceeding to enforce judgments rendered upon such bonds, and this proceeding was followed and resulted in a judgment against plaintiff in error for $123.76.

Your honors hold in your opinion that the last-named judgment was void because the bonds from which the coupons sued on in the first judgment were cut failed to stipulate that the holder should be entitled to "the remedies for the collection of the same" afforded by the act under which the bonds were issued.

128 This opinion, if adhered to, will render practically valueless the entire issue of bonds, and we feel assured that the court will gladly reconsider it, and if such reconsideration results in serious doubts as to the correctness of the opinion will award a rehearing.

A re-reading of the opinion will show your honors that you do not call in question either the original judgment or the validity of the bonds. On that subject the opinion says, at page 9:

"We are not to be understood as casting doubt upon the validity of the bond as evidence of a valid county indebtedness. No such question is here involved."

You hold that while the bondholders have a right to sue the county and recover on their bonds, they have no right to enforce their judgments as was done in the court below unless their bonds so stipulate.

This is a pure question of construction of the act. Your honors, while you seem to look somewhat askance at the statute, expressly hold in the outset of the opinion that the legislature had the constitutional power to pass it, and that the bondholder is entitled at your hands to whatever remedy the legislature intended to give him.

The question is, then, did the legislature intend to give the remedy in question to every bondholder who should get a judgment, or only holders of such bonds as contained the required stipulation?

The first and best way to find out what a statute means is to read it, and this one reads as follows:

"SEC. 2. That in the event judgment shall be rendered on any bond or bonds which may be issued by the county of Taylor under the provisions of the act to which this is an amendment, or on any coupons of such bond or bonds, such judgment shall constitute a lien

upon all real and personal property in said county subject to taxation under the revenue laws of this Commonwealth."

We respectfully submit that the proper time and the only time to raise the question which your honors have decided, was in the original suit against Taylor County. If the bonds were not issued in conformity to the statute, that was the time to raise that question by demurrer or by plea. That is the way it was done in Barnett *v.* Denison and Barnum *v.* Okolona, cited by you on page 10 of the opinion.

The judgment then being conclusive that the bonds were issued under the act and were valid, we have only to apply section 2, *supra.*

That section does not say that if the bonds so stipulated
129 the court may make an assessment. It says that "in the event a judgment shall be rendered on any bond or bonds which may be issued by the county of Taylor under the provisions of the act to which this is an amendment, or on any coupons of any such bond or bonds."

Can your honors doubt that such a judgment has been rendered? If so, is there any reason why you should not take the legislature of Kentucky at its word and enforce the judgment in the manner it has directed?

It is true that your honors characterize the statute as "one of the most stringent and extraordinary acts which has come under our observation;" but you do not for that or any other reason condemn it, and it must be borne in mind that it was not passed by the unhappy investors who bought bonds under it, but by the legislature of Kentucky at the instance of Taylor County and in order to enable that county to borrow money with which to compromise its debts. It has not proven so far to be very oppressive to the citizens of Taylor county, who, after borrowing money under it, are making no visible effort to pay it back. Surely it would come with ill grace from them to say that a statute which they drew themselves and on the faith of which they have borrowed money was "stringent." If they wish to pay the money by some means which are not "stringent" they are most welcome to do so. They made it stringent in order to attract investors, and, having succeeded, they should not complain without first tendering back the money they have borrowed.

As to the "extraordinary" character of the statute, we think that if your honors will reflect on it you will conclude that its general features embody substantially those which were enforced in Supervisors *v.* U. S., 7 Wall. 175, and Stansell *v.* Levee Board, 13 F. R. 846, and that it, or some scheme like it, is about the only means of compelling a county to pay its debts when its citizens are determined not to do so.

That the otherwise worthy citizens of Taylor county belong to that category must be apparent from the fact that the first set of bondholders were glad to get out with fifty cents on the dollar, and that the second set are still holding the bag.

We think your honors' sympathy for the victims of this statute has been misplaced, and that you will conclude that when the legislature said that any judgment on Taylor County bonds might be enforced as this one was, there is no occasion for a court to read into the statute any qualifications whatever.

130 The statute says, "In the event any judgment shall be rendered."

Your honors have added, "on any bond containing a stipulation."

The addition, like Portia's famous one, sprang from a humane motive, but we have always thought the Jew was right in his oft-repeated demurrer—

"It is not so nominated in the bond."

Respectfully submitted.

HARRIS & MARSHALL,
For Defendant in Error.

And afterwards, to wit: on February 10th, 1902, an order denying said petition for rehearing was entered in said cause clothed in the words and figures as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

CAMPBELLSVILLE LUMBER CO.
vs.
MARC HUBBERT.

The petition to rehear in this cause is hereby denied.

United States Circuit Court of Appeals for the Sixth Circuit.

I, Frank O. Loveland, clerk of the United States circuit court of appeals for the sixth circuit, do hereby certify that the foregoing is a true and correct copy of the record and proceedings in the case of Campbellsville Lumber Co. *vs.* Marc Hubbert, No. 994, as the same remains upon the files and records of said United States circuit court of appeals for the sixth circuit, and of the whole thereof.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, at the city of Cincinnati, Ohio, this 14th day of March, A. D. 1902.

[Seal United States Circuit Court of Appeals, Sixth Circuit.]

FRANK O. LOVELAND,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

131 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the sixth circuit, Greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in which Campbellsville Lumber Company is plaintiff in error and Marc Hubbert is defendant in error which suit was removed into the said circuit court of appeals by virtue of a writ of error to the circuit court of the United States for the district of Kentucky, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court
132 of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 28th day of April, in the year of our Lord one thousand nine hundred and two.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

UNITED STATES OF AMERICA, *Sixth Judicial Circuit,* } *ss:*

I, Frank O. Loveland, clerk of the United States circuit court of appeals for the sixth circuit, do hereby certify that I have this day received the foregoing writ and return the same pursuant to a stipulation of counsel filed this 1st day of May, 1902, which stipulation is as follows:

"United States Circuit Court of Appeals for the Sixth Circuit.

CAMPBELLSVILLE LUMBER COMPANY
vs.
MARC HUBBERT. } Stipulation.

It is agreed between the parties to this cause that the transcript of the record thereof now on file in the clerk's office of the Supreme Court may be taken as a return to the writ of certiorari.

ERNEST MACPHERSON,
For Plaintiff in Error.
W. O. HARRIS,
For Defendant in Error."

Witness, my official signature and the seal of the United States circuit court of appeals at the city of Cincinnati, Ohio, this 1st day of May, 1902.

[Seal United States Circuit Court of Appeals, Sixth Circuit.]

FRANK O. LOVELAND,
Clerk United States Circuit Court of Appeals for the Sixth Circuit.

133 [Endorsed:] File No. 18,480. Supreme Court of the United States. No. 293, October term, 1902. Marc Hubbert, *vs.* Campbellsville Lumber Co. Writ of certiorari and return. Filed May 3, 1902.

FILED
APR 7 1902
JAMES H. McKENNEY,
Clerk.

Filed April 7, 1902.

IN THE

Supreme Court of the United States

MARC HUBBERT, - - - - - - - - - - *Petitioner,*

VERSUS

CAMPBELLSVILLE LUMBER CO., - - - *Defendant.*

PETITION FOR CERTIORARI.

W. O. HARRIS,
For Petitioner.

JOHN P. MORTON & CO., PRINTERS, LOUISVILLE.

NO. 994.

United States Circuit Court of Appeals,

SIXTH CIRCUIT.

JANUARY TERM, 1902.

CAMPBELLSVILLE LUMBER CO., - *Plaintiff in Error,*

VERSUS

MARC HUBBERT, - - - - - *Defendant in Error.*

} Notice.

Plaintiff in error is hereby notified that defendant in error will, on Monday, the 7th day of April, 1902, upon its verified petition and a copy of the entire record in this cause, file a petition in the Supreme Court of the United States and move the said Court for a writ of certiorari or other process, addressed to the Circuit Court of Appeals for the Sixth Circuit, and commanding it to certify to the Supreme Court for its review and determination the records in this case.

Copies of the petition, motion, and brief in support thereof are herewith delivered to you.

W. O. HARRIS,
Counsel.

Service of the foregoing notice and copies are acknowledged this 19th day of March, 1902.

ERNEST MACPHERSON,
Counsel for Campbellsville Lumber Company.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1901.

MARC HUBBERT, - - - - - - - - - *Petitioner,*

VERSUS

CAMPBELLSVILLE LUMBER CO., - - *Defendant.*

} Motion.

Comes Marc Hubbert, by W. O. Harris, his counsel, and moves this Honorable Court that it shall by certiorari, or other proper process directed to the Honorable the Judges of the Circuit Court of Appeals for the Sixth Circuit, require said Court to certify to this Court for its review and determination a certain cause in said Court of Appeals, lately pending, wherein defendant, the Campbellsville Lumber Company, was plaintiff in error and your petitioner, Marc Hubbert, was defendant in error, and to that end it now tenders herewith its petition and brief, with a certified copy of the entire record in said cause in said Circuit Court of Appeals.

W. O. HARRIS,
Counsel.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1902.

MARC HUBBERT, - - - - - - - - - *Petitioner*,

VERSUS

CAMPBELLSVILLE LUMBER CO., - - - *Defendant.*

} Petition.

Petition for the writ of certiorari requiring the United States Circuit Court of Appeals for the Sixth Circuit to certify to the Supreme Court of the United States, for its revision and determination, the writ of error taken by the Campbellsville Lumber Company against Marc Hubbert.

To the Honorable the Chief Justice and the Judges of the Supreme Court of the United States:

Your petitioner, Marc Hubbert, respectfully represents as follows:

I.

By an Act of the Legislature of Kentucky, approved March 18, 1878, and printed in an appendix to the brief in support of this petition, the County of Taylor was authorized to issue bonds to the amount of $125,000, to be sold at par and the proceeds used to compromise a previous bonded debt at rates not exceeding fifty cents on the dollar.

By an Act approved February 27, 1882, the amount of bonds authorized was increased to $150,000. See appendix.

II.

Marc Hubbert, a holder of coupons cut from these bonds, obtained judgment by *default against the* County in the Circuit Court of the United States for the District of Kentucky for $2,963.13 (Rec., p. 14), on which judgment execution issued and was returned " no property found." (Rec. 104.)

III.

By Sections 2 to 8 of the Amended Act it is provided in substance that if judgment shall be rendered on any bond or coupon issued thereunder, and the court rendering the judgment shall be of opinion that " such serious obstruction is likely to be offered to the enforcement of any such judgment as will materially delay it," it may refer the case to a commissioner to ascertain the amount necessary to be paid by each taxpayer in order to discharge the judgment, and, after advertising the filing of the report and affording all parties an opportunity to be heard, may render judgment against the taxpayers for the amount found due by each.

After the return of " no property found " on his execution, Hubbert filed an affidavit setting out the fact that the opposition in the County to the payment of the bonds was so great that for several years no sheriff had qualified and no money collected on levies made (Rec. 104), and on the filing of this affidavit a commissioner was appointed and a report made assessing upon the taxpayers the amount necessary to pay off the judgment. (Rec. 14, etc.)

The advertisement of the report and other steps required by the Amended Act were strictly pursued. Exceptions were filed by the County, but no taxpayer appeared or filed any exception, and judgment was rendered against each taxpayer for the amount found due by the report. (Rec. 24.)

IV.

Among the judgments rendered was one for $123.76 against the Campbellsville Lumber Company, upon which execution of *fieri facias* was issued. The Lumber Company thereupon appeared and moved the court, on affidavit filed, to set aside the judgment and quash the execution. (Rec. 98.)

The grounds of the motion are stated in the affidavit.

The principal ground, and the one upon which the case turned in the Circuit Court of Appeals, was that the bonds did not contain a stipulation to the effect that the holder should be entitled to the benefit of the provisions of the Act under which they were issued. (Rec. 100.)

The statute provision relied on in the affidavit is as follows:

> "SEC. 10. The bonds to be issued under the Act to which this is an Amendment shall, on their face, stipulate that the holders of any of them, or any coupon thereof, shall be entitled to the remedies for the collection of the same herein or in the Act to which this is an Amendment provided for."

The bonds did not contain this stipulation, but did contain the following recital:

> "This bond is one of an issue amounting in all to $125,000, authorized by an Act of the General Assembly of the Commonwealth of Kentucky, approved March 18, 1878." (Rec. 102.)

The motion to set aside the judgment was overruled and a writ of error taken to the Circuit Court of Appeals, where the judgment was reversed. (Rec. 116.)

The ground of the reversal was that the judgment against the taxpayer was void, because the bonds from which were cut the coupons upon which the judgment against the County was based did not contain the stipulation required by Section 10 of the Amended Act above quoted.

WHEREFORE your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Sixth Circuit, commanding the said court to certify and send to this Court on a day certain to be therein designated a full and complete transcript of the record and all proceedings of the said Court in said case therein, entitled Campbellsville Lumber Company v. Marc Hubbert, to the end that said case may be reviewed and determined by the Court as provided in Section *b* of the Act of Congress entitled "An Act to Establish Courts of Appeals and to Define and Regulate in Certain Cases the Jurisdiction of the Courts of the United States and for Other Purposes," approved March 3, 1891, or that your petitioner may have such other or further relief or remedy in the premises as to this Court may seem appropriate and in confirmity with said Act, and that the said judgment of the said Circuit Court of Appeals in the said case and every part thereof may be reversed by this Honorable Court.

MARC HUBBERT,
By W. O. HARRIS,
Counsel.

COMMONWEALTH OF KENTUCKY,
COUNTY OF JEFFERSON. } ss.

W. O. Harris, being duly sworn, says he is counsel for Marc Hubbert, the petitioner, that he prepared the foregoing petition, and that the allegations therein are true, as he verily believes.

W. O. HARRIS.

Subscribed and sworn to by W. O. Harris before me, this March 14th, 1902.

My commission expires February 10th, 1906.

ARTHUR PETER,
Notary Public, Jefferson Co., Ky.

IN THE

SUPREME COURT OF THE UNITED STATES.

MARC HUBBERT, - - - - - - - - *Petitioner,*

VERSUS

CAMPBELLSVILLE LUMBER CO., - - *Defendant.*

Brief in Support of Petition.

The judgment of the Circuit Court of Appeals affects directly only one taxpayer, whose debt is only $123.76, but it will compel the Circuit Court to set aside the judgment against all other taxpayers and will deprive all the bondholders of the remedy given by the Act under which the bonds were issued. Its practical effect will be to enable the County to continue to repudiate its entire bonded debt of $150,000.

There is no disputed question of fact, and the legal question is purely one of construction of the statute.

Nor does this question involve the *validity* of the bonds or coupons. That question was settled by the judgment against Taylor County, which has not been appealed from.

The only question is as to whether the plaintiff in that judgment, having followed strictly the procedure pointed out, is entitled to the remedy conferred by the statute. The remedy was originally one of grace conferred by the sovereign, but became a contract with the bondholders as soon as the bonds were sold. It only remains to inquire to whom the statute gave the remedy.

The conditions upon which the court may assess a tax upon the citizens of the County are plainly set out in Sections 2 and 3 of the Amended Act.

Section 2 provides that any judgment on any bond or coupon shall be a lien on all taxables in the County.

Section 3 provides as follows:

> "If the court rendering such judgment shall be of opinion that such serious obstruction is likely to be offered to the enforcement of any such judgment as will materially delay it, it shall on motion of the plaintiff therein refer the same to a commissioner," &c.

Here, then, we have two conditions, and only two; one is a valid judgment and the other is allegation and proof of obstruction to its enforcement. Both of these propositions are undisputed. The original judgment was obtained by default on due service of process, and there has been no appeal from it.

The proof of obstruction was the marshal's return and the affidavit of the plaintiff, found at page 104 of the Transcript. Its sufficiency as proof has never been questioned, and even if insufficient it would not affect collaterally the validity of the judgment upon it.

The opinion of the Circuit Court of Appeals expressly admits both these propositions, and yet the Court reaches the conclusion that the trial court should have gone behind the first judgment and the evidence of obstruction required by the statute and should have required allegation and proof that the coupons upon which that judgment was based were cut from bonds containing the stipulation directed, or required, if you will, by Section 10.

The effect of this is to read into Section 2 a requirement which is not found there, and to hold the judgment void because it did not follow that judicially imported requirement. The statute says that *any judgment* rendered on bonds or coupons may be enforced as therein directed; the Circuit Court of Appeals says "any judgment rendered on coupons cut from a bond containing the stipulation required by Section 10."

Such liberties may have been taken by courts with statutes, but it should require great stress of weather to drive a court into such a port.

The stress of weather in this case is plainly stated by the court.

The opinion states that the Act is "one of the most stringent and extraordinary acts which has come under our observation," that "its operation must be attended with unusual harshness and extraordinary expense," that its provisions are "novel and summary" and "novel and drastic," and the conclusion is reached that "such an Act should be strictly construed, and a case clearly made out before any relief should be extended thereunder."

It might be suggested that the proper time for the inhabitants of Taylor County to discover the enormities of this statute was when they got the legislature to pass it and sold the bonds issued under it, but, passing that, let us see whether it deserves the animadversions so liberally bestowed upon it by the court.

Commencing with the assessment, we find it provided in Section 3 of the Act that it is to be based on the State assessment for taxes, but is to be made by a commissioner appointed by the court instead of the regular State assessor. That may be unusual, but can hardly be justly called harsh or oppressive. When the assessment is made it is to be returned into court, its filing is to be advertised for three weeks, and afterward thirty days' time is to be given for exceptions. (Sec. 5.)

The opinion says that this is due process of law, and does not anywhere intimate that there is any harshness or oppression in it.

Coming now to the enforcement, we find that directed to be done by judgment, and at the expiration of ninety days by execution. (Sec. 7.)

Surely that is less harsh to the taxpayer than the usual method of collecting taxes.

The opinion also states that the Act is

> "A wide departure from ordinary methods for enforcing the payment of a judgment against a municipality already armed

with full power to assess and collect a tax to meet its obligations."

This is true, but we will be pardoned for suggesting the fact that the first set of bondholders did not find this armament sufficient to enable them to collect their bonds, and that some "wide departure" was necessary to induce others to subscribe for bonds at par.

Stress is also laid in the opinion on the fact that the operation of the statute

> "must be attended with unusual harshness and extraordinary expense, growing out of the fact that separate judgments are provided for against taxpayers, upon which separate executions must—90."

It is true that a suit is more expensive than a levy and sale, but the court overlooks the fact, which appears from Hubbert's affidavit, that a levy has already been made to pay the coupons of 1896 and 1897 (Rec. 105), and that certain citizens have paid their proportions of the debt. (See Report, p. 106.) This shows that each taxpayer has had an opportunity to avoid the expense of a suit by paying his taxes, and should diminish the sympathy which the court seems to have extended to him.

We may also properly suggest, that where the taxpayer refuses to pay his taxes and where no one can be found to act as Sheriff and make him pay them, a law which subjects him to the costs of a suit can hardly be condemned on the ground of its "extraordinary expense."

It may also occur to Your Honors that in a case where the ordinary remedies had proven ineffectual to coerce payment of a former issue of bonds, and where it was desired to give new bondholders a new remedy, the one which was given in this case was about as inexpensive as any which could be devised.

The Federal Reports furnish several precedents for such statutes.

In Supervisors v. Rogers, 7 Wallace, 175, a State statute empowered its courts to appoint an officer to perform any duty

required to be performed under a mandamus. A Federal court sitting in that State appointed its Marshal to levy and collect a tax, and its action was affirmed by this Court. That case was again approved by this Court in

Thompson v. Allen County, 115 U. S. 559.

In Stansell v. Levee Board, 13 Fed. Rep. 846, bonds had been issued under a Mississippi statute authorizing the State courts, in the event of non-payment, to appoint commissioners to levy and collect a tax. The Federal court was applied to, and afforded the relief.

In none of these cases was there any suggestion from court or counsel that there was anything harsh or oppressive in taking the power to levy and collect taxes from those who would not or could not perform their duty and conferring it upon those who would.

There is a long line of cases, which are reviewed in Thompson v. Allen County, holding that the taxing power is sovereign and must be exercised by those to whom the State has committed it, but the opinion in this case is the first to intimate that courts should hesitate to exercise such powers when so conferred.

The opinion of the Circuit Court of Appeals is also novel in holding that the recital called for in Section 10 is mandatory, and yet that bonds not having that recital are valid obligations. The court says:

> "We are not to be understood as casting doubt upon the validity of the bonds as evidence of a valid county indebtedness. No such question is here involved."

The court's conclusion is that while all the bonds are valid only those bonds containing the stipulation can be enforced as required by Sections 2 and 3 of the Act. The statute does not say this. It says that *all judgments* on bonds may be so enforced. If, then, judgment may be had on any bond, and any judgment may be enforced by court proceedings, there is nothing left upon which to rest the court's opinion except to interpolate into the

statute something which is not there, namely, that no judgment shall be thus enforced unless it contains the required stipulation.

The court below rests its opinion upon the proposition that Section 10 of the Act is mandatory. If so, it made the bonds void and the judgment against the County erroneous, but we submit that if that judgment be conclusive in this proceeding then the right to enforce it under the Act must exist.

But, waiving this, let us inquire whether this provision of the Act is mandatory. The principles governing such questions are well settled in this Court.

In the case of French v. Edwards, 13 Wallace, 506, a tax case, the Court said:

> "When the requisitions prescribed are intended for the protection of the citizen and to prevent a sacrifice of his proty, and by a disregard of which his rights might be and generally would be injuriously affected, they are not directory but mandatory."

This language was quoted with approval in Lyon v. Alley, 130 U. S. 185, and in Erhardt v. Schroeder, 155 U. S. 129. Your Honors said:

> "Very rarely, if ever, is there power in the judiciary to enter into all the questions affecting the legality of a charge for taxes, and therefore, in general, a statute, even though not in express terms mandatory, is treated as being so if its literal observance might afford substantial protection to the party complaining, and a failure of such observance by an officer is considered to render his act void."

Tried by these tests, we submit that Section 10 is plainly a provision intended to make the bonds attractive to purchasers, and is directory and not mandatory. Can it be that the taxpayers' rights would be "injuriously affected" or would fail of "substantial protection" if the stipulation were omitted? The opinion below answers this affirmatively upon a ground which seems to us much more ingenious than sound. It says:

"The purpose doubtless was to compel the authorities issuing them to recognize the fact that by such stipulation they were consenting to the special and stringent remedies of the Act."

The court's idea seems to have been that this stipulation was intended as a solemn warning to the County Judge and Clerk, and that by reason of its absence the substantial rights of the tax-payers were prejudiced. If such had been its purpose, the Act would have required one of the bonds to be framed and hung up in the Clerk's office.

Your Honors have never yet taken such a fanciful view of a statute, nor denied your aid to a creditor enforcing an honest debt, upon grounds so slender.

We respectfully submit that the case is one which ought to be reviewed.

W. O. HARRIS,
For Petitioner.

APPENDIX.

CHAPTER 483.

AN ACT FOR THE BENEFIT OF TAYLOR COUNTY, EMPOWERING IT TO COMPROMISE ITS DEBTS, ISSUE BONDS, AND LEVY AND COLLECT TAXES TO PAY THE SAME.

BE IT ENACTED, By the General Assembly of the Commonwealth of Kentucky:

Section 1. That the county of Taylor be, and it is hereby authorized and empowered to make and enter into any contract or contracts, with any person or persons, corporation or association of persons, for the compromise, purchase, or redemption of any and all bonds, coupons, judgments, or other indebtedness of said county, whether the same be due or not due, growing out of the issue of any bonds or coupons heretofore issued by said county; and said county, acting through its county court, and such agents as may be appointed by the county court of Taylor county, are hereby authorized and empowered to execute and carry out such contracts, and for that purpose it is hereby authorized to issue, negotiate, and deliver new bonds of said county, not exceeding one hundred and twenty-five thousand dollars, in such amounts as it may deem best, and on such time as the county may think proper, and bearing any rate of interest not exceeding eight per cent. per annum, with coupons attached to represent the interest, payable semi-annually at such time and place as it may think best. The bonds to be signed by the county judge and county court clerk, with the seal of said county attached, and the coupons on said bonds to be signed by the clerk alone. And it shall have the right to sell all or any number of said bonds at not less than their par value, the proceeds of which may be used to buy the present outstanding bonds of Taylor county, at rates not to exceed fifty cents on the dollar, or to exchange the same with the holders of bonds of Taylor county now outstanding, upon such terms as may be agreed to by the holders and the said county court of Taylor county and its agents, upon the surrender and cancellation of the old bonds: *Provided*, that in such exchange no greater rate shall be allowed in exchange than fifty cents on the dollar for said old bonds. And the county clerk of said county shall keep a record of all bonds issued under this act, showing the date of such bond, when payable, the amount thereof, and the number of coupons attached to

each bond; which record shall also show the number and amount of bonds sold, and the number and amount exchanged for other bonds of said county. The records shall also show the number, amount of bonds, and coupons taken up and canceled by sale or exchange of the new bonds, and said record shall be open at all times to the inspection of the taxpayers of said county.

Sec. 2. That the faith and credit of the county of Taylor be, and the same is hereby, pledged to carry out, in good faith, any and all contracts made by it for the issue, purchase, compromise, and redemption of any and all bonds and coupons issued under the first section of this act; and any and all bonds and coupons issued and delivered under this act shall be valid and binding on the parties thereto; and any *bona fide* holder or owner of any such bond or coupon, issued and delivered as aforesaid, on obtaining a judgment, in any court of competent jurisdiction, against the said county, shall, if the county refuses, for thirty days after demand, to levy and proceed in good faith to have collected a tax sufficient to pay any such judgment, interest, and costs, be entitled, on application to the circuit court, or, in vacation, to the circuit judge of the seventh judicial district, after having notice thereof served on the judge of said county, to have an order made, based on the last preceding assessment, levying a tax and appointing a collector, whose duty it shall be to collect from the taxpayers of Taylor county sufficient to pay off such judgment, interest, and cost, and the cost of collecting the same; and the collector so appointed shall have all the power given by law to the collectors of State revenue and county levies, and be liable in like manner; *Provided, also,* That any collector appointed under this section shall, before he proceeds to act, execute a bond, with good solvent surety, to be approved and attested by the judge of said district, the same to be by him delivered to the Taylor county court clerk for safe keeping; and should the county court, held by the county judge and justices, or by the county judge, fail, for ten days after demand in writing, to levy and proceed in good faith to collect a tax as provided in this act, then, and in that event, it is hereby made the duty of the circuit court, or judge thereof in vacation, being informed of such failure by any *bona fide* bondholder or his attorney, to levy and have collected, as in case of a judgment, a tax to pay off semi-annual interest on past due coupons of bonds issued under this act, of which application the county court or judge thereof shall have ten days' written notice.

Sec. 3. That if at any time all the justices of the peace of Taylor county shall resign, or if at any time the number of justices, from death, resignation, or other cause, be reduced to a less number than a majority of all the justices to which, by law, said county is entitled, then, and in that event, the county judge of said county, sitting as a court, shall have and exercise all the powers of the county court of Taylor county, within the meaning and purview of this act, and possess and exercise all the powers conferred upon the Taylor county court by this act.

Sec. 4. That it shall be the duty of all collectors appointed under the provisions of this act to make monthly reports, under oath, to the county treasurer of Taylor county of all moneys collected by him or them; and such collectors shall at once pay over to the county treasurer the amount of all moneys collected by him, less the commissions allowed by law or order of the court or judge making the levy. And it is hereby made the duty of the treasurer of Taylor county to deposit all moneys collected under the provisions of this Act, so soon as he receives the same, in some solvent bank, with a paid-up capital of not less than $100,000, to the credit of Taylor county, which money shall be paid out by such bank only upon the check of the treasurer of Taylor county. And no such collector or treasurer shall have the right to use or loan said money, or any part thereof, for any purpose whatever, save and except as provided in this Act.

Sec. 5. All such collectors shall collect the entire tax in his hands, and pay the same over to the county treasurer within six months from the time the tax-books are placed in his hands for collection. And it is hereby made the duty of the sheriff of Taylor county to collect all tax levied by the county court under this act; and should he fail for ten days, after the levy of any such tax and notice to him, to execute bond, with good and sufficient surety, to be approved by the county court, then it shall be the duty of said county court to declare, by order of record, his office of tax collector forfeited. And in that case it is made the duty of the said county court to appoint a tax collector, and take bond from him, with good and approved surety, and fix, by order, the compensation of such collector. And if any sheriff or tax collector shall fail to collect or pay over the taxes, as provided in this act, to the county treasurer, such sheriff or collector so in default shall, with his sureties in his official bond, be liable to an action, on motion on ten days' notice in the Taylor circuit or common pleas courts, in which action the county of Taylor, in its own name, shall recover for any default of

the sheriff or collector the amount due the county, with interest from the time it should have been paid, the costs of the action or motion, and ten per cent damages on the amount found due and recoverable. And should the treasurer of Taylor county fail to pay over any money in his hands when ordered to do so by the Taylor county court, he and his sureties shall be liable in like manner as is herein provided in regard to sheriffs and tax collectors; and the Taylor county court, held by the county judge, shall have the right to require all sheriffs, tax collectors, and the treasurer of Taylor county to renew or give additional surety upon the official bonds of such officers, as often as he may think proper, so as at all times to have securities on said bonds good and solvent for any amount of money in their respective hands.

Sec. 6. That it shall be the duty of Taylor county to have an assessment, make a levy, appoint a collector, and have collected from the taxpayers of Taylor county, upon all property which is now or that may hereafter be assessed for, and subject to, State revenue purposes, including the amount given in order to equalize law, to pay the semi-annual interest or past due coupons on all bonds issued under the provisions of this act, and also to pay off and take up the said bonds at maturity; and if the county court shall deem it proper, it may, in addition to the tax herein provided for, levy an additional tax upon the taxable property of said county to create a sinking fund to purchase any or all bonds and coupons issued under the provisions of this act.

Sec. 7. That the county court of Taylor county shall cancel all bonds and coupons purchased under the provisions of this act by writing on the face thereof, with red ink, the following: "This bond has been bought in by Taylor county, and is not to be reissued"; and the county clerk, in the presence of the county judge, after having made a record of the bonds and coupons purchased under this act, shall burn the same.

Sec. 8. *Be it further enacted*, And as an inducement to the taxpayers of Taylor county to furnish the money with which to at once purchase the outstanding bonds and debts of said county, it is hereby made lawful for the taxpayers, or any of them, of Taylor county, to pay to the county treasurer his or their taxes due, or to become due, to said county, taking his receipt therefor; and all payments so made are declared a valid payment of such a one's share of the taxes due, or to become due, on account of the present indebtedness of said county, to the extent he or they may thus pay; and if the amount of

the payment or payments thus made shall be equal to or exceed the whole amount of taxes due, and to become due, by such taxpayer, to take up the bonded debt of said county, then the taxpayer so paying shall be relieved from any further taxes under this act; and should any taxpayer pay, under this section, more than his proper quota of said indebtedness, then it shall be the duty of the county to refund to him the over-plus so soon as ascertained, or as may be agreed upon; and the treasurer of Taylor county shall keep a record-book, in which he shall open an account with the parties making advancements under this section, which book shall be carefully indexed, and show the full names of the payers, the amounts paid, and the date of payment; and the book shall be subject at all times to inspection by the parties making advances, and the Taylor county court and sheriff or collector; and the money or moneys thus collected shall be deposited by the treasurer in like manner as that taken in through the collectors, and be subject to the same restrictions in every respect; and the county court shall make the treasurer a proper allowance for his trouble under this act, to be paid out of the amount collected.

Sec. 9. That if any sheriff, collector, or the county treasurer, or other county officer having charge or control thereof, shall use, loan, or in any way misapply any money or moneys collected or raised under this act, except the commissions, to which, by law, they may be entitled, or shall be a party to any such misapplication, of said fund, or any part thereof, or aid or assist any one so offending, shall be guilty of felony, and, upon indictment and conviction, shall be confined to the penitentiary of this Commonwealth for a period of not less than two nor over ten years.

Sec. 10. This act shall be in force and take effect from and after its passage.

Approved March 18, 1878.

CHAPTER 306.

AN ACT TO AMEND AN ACT ENTITLED, "AN ACT FOR THE BENEFIT OF TAYLOR COUNTY, EMPOWERING IT TO COMPROMISE ITS DEBTS, ISSUE BONDS, AND LEVY AND COLLECT TAXES TO PAY THE SAME." APPROVED MARCH 18, 1878.

BE IT ENACTED by the General Assembly of the Commonwealth of Kentucky:

Section 1. That the words "twenty-five," preceding the word "thousand," in the first section of this act, be, and the same is hereby, stricken out, and the word "fifty" inserted in lieu thereof.

Sec. 2. That in the event judgment shall be rendered on any bond or bonds which may be issued by the county of Taylor under the provisions of the act to which this is an amendment, or on any coupons of any such bond or bonds, such judgments shall constitute a lien upon all real and personal property in said county, subject to taxation under the revenue laws of this Commonwealth.

Sec. 3. If the court rendering such judgment shall be of opinion that such serious obstruction is likely to be offered to the enforcement of any such judgment as will materially delay it, it shall, on motion of the plaintiff therein, refer the same to a commissioner, with instructions to ascertain and report, on a day to be by it named, the amount which it will be necessary for the holders or owners of any such property to pay in order to raise promptly, in proportion to the value of such property owned by each, a sum sufficient to pay the said judgment, and all costs of the said suit, and the costs of collecting the same, making due allowance for probable delinquencies. Upon making any such reference, the said court shall make an order, and, if need be, enforce it by process of contempt, directing the officers having charge of the books containing the last assessment for the purpose of State taxation, to deliver them to the said commissioner, to be by him used in making out his report.

Sec. 4. If, for any reason, such assessment books shall not be promptly forthcoming, the court shall provide for a new assessment under the direction and supervision of the said commissioner.

Sec. 5. Upon the completion of said report, the said commissioner shall file the same in the clerk's office of said court, and publish in a newspaper published in Taylor or Marion county, once each week for three weeks, a notice of the filing of said report, and stating that the same will be subject to exceptions, to be filed in said clerk's office until a day to be mentioned in said notice, which day shall not be less than thirty nor more than forty days from the last day on which the said notice is to be published.

Sec. 6. On a day to be named by the court in the order referring the said judgment to the commissioner, or on the first day of the next regular or special term of the said court after the expiration of the time for filing exceptions, the said exceptions shall stand for hearing; but the hearing thereof may be continued from time to time, for good cause shown, or to suit the convenience of the court.

Sec. 7. When, after such correction as the court may deem proper, the said report shall be approved and confirmed, judgment shall be rendered against the parties named in the report for the

amounts therein named, and at the expiration of ninety days from the date of said judgment several executions shall issue against all persons who have not then paid to the sheriff, or other officer who collects executions from said court, for the sums adjudged to be due by them respectively, which may be levied on any property subject to the State revenue tax held by the defendants, respectively, or which was owned by them at the date of the judgment.

Sec. 8. The court shall make proper orders for the safe keeping and disposition of the money to be collected under the provisions of this act; and if the amount collected shall be more than necessary to pay the judgment and costs, the residue shall be paid over to the commissioner of the sinking fund of said county, to be used for the payment of the principal and interest of bonds issued under the act to which this is an amendment.

Sec. 9. The sheriff or other officer who may collect such sums as shall be voluntarily paid to him under any such judgment shall be entitled to the same compensation which sheriffs receive for collecting taxes due to this Commonwealth.

Sec. 10. The bonds to be issued under the act to which this is an amendment shall, on their face, stipulate that the holders of any of them, or any coupon thereof, shall be entitled to the remedies for the collection of the same herein, and in the act to which this is an amendment, provided for.

Sec. 11. This act to take effect from its passage.

Approved February 27, 1882.

FILE COPY. 3832

NO. 293. 31

IN THE

Supreme Court of the United States

OCTOBER TERM, 1902.

Office Supreme Court U. S.
FILED
APR 6 1903
JAMES H. McKENNEY,
Clerk.

MARC HUBBERT, - - - - - - - - - - *Petitioner,*

VERSUS

CAMPBELLSVILLE LUMBER CO., - - - *Defendant.*

BRIEF FOR PETITIONER.

W. O. HARRIS,
For Petitioner.

JOHN P. MORTON & COMPANY, PRINTERS, LOUISVILLE.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1902.

MARC HUBBERT, - - - *Petitioner,*

No. 293. *VERSUS*

CAMPBELLSVILLE LUMBER CO., - *Defendant.*

Brief for Petitioner.

STATEMENT OF THE CASE.

I.

By an Act of the Legislature of Kentucky, approved March 18, 1878, and printed in an Appendix to this brief, the County of Taylor was authorized to issue bonds to the amount of $125,000, to be sold at par and the proceeds used to compromise a previous bonded debt of the County at rates not exceeding fifty cents on the dollar.

By an Act approved February 27, 1882, the amount of bonds authorized was increased to $150,000. (See Appendix.)

II.

Petitioner Marc Hubbert, a holder of coupons cut from these bonds, obtained judgment by default against the County in the Circuit Court of the United States for the District of Kentucky for $2,963.13 (Rec., p. 13), on which judgment execution issued and was returned "no property found." (See affidavit of Hubbert, Rec. 70.)

III.

The Amended Act provides the following method of enforcing judgments rendered upon bonds and coupons issued under it:

> "Sec. 2. That in the event judgment shall be rendered on any bond or bonds which may be issued by the county of Taylor under the provisions of the act to which this is an amendment, or on any coupons of any such bond or bonds, such judgments shall constitute a lien upon all real and personal property in said county, subject to taxation under the revenue laws of this Commonwealth.
>
> "Sec. 3. If the court rendering such judgment shall be of opinion that such serious obstruction is likely to be offered to the enforcement of any such judgment as will materially delay it, it shall, on motion of the plaintiff therein, refer the same to a commissioner, with instructions to ascertain and report, on a day to be by it named, the amount which it will be necessary for the holders or owners of any such property to pay in order to raise promptly, in proportion to the value of such property owned by each, a sum sufficient to pay the said judgment, and all costs of the said suit, and the cost of collecting the same, making due allowance for probable delinquencies. Upon making any such reference the said court shall make an order, and, if need be, enforce it by process of contempt, directing the officers having charge of the books containing the last assessment for the purpose of State taxation to deliver them to the said commissioner, to be by him used in making out his report."

The subsequent sections provide for the filing of the Report in Court, its publication in a newspaper for three weeks, for thirty days for exceptions and for judgment against the taxpayers found to be liable for the tax necessary to pay the judgment. (See Appendix, p. 14.)

IV.

After the return of "no property found" on his execution, Hubbert filed an affidavit setting out the fact that the opposition in the County to the payment of the bonds was so great that for several years no sheriff had qualified and no money had been collected on levies made (Rec. 70), and on the filing of this affidavit a commissioner was appointed and a report made assessing upon the taxpayers the amount necessary to pay off the judgment. (Rec. 71, 72.)

The advertisement of the report and other steps required by the Amended Act were strictly pursued. Exceptions were filed by the County (p. 16), but no taxpayer appeared or filed any exception, and judgment was rendered against each taxpayer for the amount found due by the report. (Rec. 21.)

V.

Among the judgments rendered was one for $123.76 against the Campbellsville Lumber Company, upon which execution of *fieri facias* was issued. (Rec. 70.) The Lumber Company thereupon appeared and moved the Court, on affidavit filed, to set aside the judgment and quash the execution. (Rec. 65.)

The grounds of the motion are stated in the affidavit and may be summarized as follows:

1. That the Lumber Company was not before the Court by service of process or notice.

2. That the assessment against it was excessive.

3. That the bonds from which the coupons sued on were cut did not contain the stipulation required by Section 10 of the Amended Act.

4. That Hubbert was not a *bona fide* holder of the coupons upon which the judgment against the county was rendered.

5. That the Act under which the judgment against the Lumber Company was rendered had been repealed. (Rec. 66.)

The motion to set aside the judgment was overruled and a Bill of Exceptions tendered and allowed. (Rec. 66.)

VI.

A Writ of Error was thereupon sued out against the judgment rendered against the Lumber Company and against the order overruling its motion to set that judgment aside, and upon the hearing in the Circuit Court of Appeals the judgment of the Circuit Court was held to be void. (See Opinion, Rec. 79.)

The Bill of Exceptions embodied much of the record previously made, and the clerk in making out his transcript on the Writ of Error copied these parts of the record from the bill instead of putting them in their places as they originally appeared in the record. This breaks the chronological order of the pleadings and orders, and confuses the record. For this confusion the petitioner in this Court is in no wise responsible.

ASSIGNMENT OF ERRORS.

It is respectfully averred that the Circuit Court of Appeals erred in holding that the judgment against the Campbellsville Lumber Company was void.

BRIEF OF ARGUMENT.

Taking the questions raised by the Writ of Error in the order in which they are stated in the affidavit filed in support of the motion to set aside the judgment, we will discuss

I.

Whether there was due process of law against the Lumber Company.

The Circuit Court of Appeals found that there was, and we will not discuss the question further than to say that statutes affording substantially similar remedies for the enforcement of municipal bonds were enforced in

Stansell v. Levee Board, 13 F. R. 846;

Supervisors v. Rogers, 7 Wall. 175.

In more recent cases involving local assessments for streets and sewers it is held that notice by publication is due process of law.

Lent v. Tillson, 140 U. S. 316;

Paulsen v. Portland, 149 U. S. 30.

In the case at bar it is not disputed that the three weeks' notice by publication, required by Section 5 of the Amended Act, was properly given.

II.

Was the assessment against the taxpayers excessive?

The Circuit Court of Appeals dismisses this objection with the remark that it does not go to the validity of the judgment.

In addition to this we will call attention to the provision of Section 3 of the Amended Act requiring the Commissioner to make in his assessment "due allowance for probable delinquen-

cies," and to that of Section 8 providing that any surplus collected shall be paid over to the County and used in paying bonds issued under the Act.

In view of the smallness of the assessments and the well-known difficulties of collection it can hardly be argued that the Commissioner erred, nor could his error, if he made one, render the judgment void.

III.

That the bonds from which the coupons sued on were cut did not contain the stipulation required by Section 10 of the Amended Act.

Upon this proposition the Circuit Court of Appeals rested its opinion, and it must be discussed more fully.

The section of the Act referred to reads as follows:

> "Sec. 10. The bonds to be issued under the Act to which this is an amendment shall, on their face, stipulate that the holders of any of them or any coupon thereof shall be entitled to the remedies for the collection of the same herein, and in the Act to which this is an amendment provided for."

The bonds did not contain the stipulation referred to in the statute, but did contain on their face the following recital:

> "This is one of an issue amounting in all to $125,000 authorized by an Act of the General Assembly of the Commonwealth of Kentucky, approved March 18, 1878." (Rec. 68.)

Each bond also bore the following endorsement:

> "Issued by authority of an Act of the General Assembly of the State of Kentucky, approved March 18, 1878." (Rec. 69.)

The question, and indeed the case, turns upon two propositions, namely, were the recitals a substantial compliance with

the provisions of Section 10, and if not, was that section mandatory or directory?

We think it was a substantial compliance, because a bond issued under an act is necessarily governed by the act, and hence the holder of the bond must be "entitled to the remedies" afforded by the act. To say that a bond is issued under an act expresses to a common intent the whole idea. To add that it is entitled to the benefits of the act is surplusage whether we call it a stipulation or what not.

We also submit that Section 10 was only intended to make the bonds attractive to purchasers and was plainly directory.

The tests for distinguishing mandatory from directory provisions are plain and simple. In French v. Edwards, a tax case, reported in 13 Wall. 506, this Court said:

> "When the requisitions prescribed are intended for the protection of the citizen and to prevent a sacrifice of his property, and by a disregard of which his rights might be and generally would be injuriously affected, they are not directory but mandatory."

In Lyon v. Alley, 130 U. S. 185, this language was quoted with approval, and in Erhardt v. Schroeder, 155 U. S. 129, you said that a statute was mandatory "if its literal observance might afford substantial protection to the party complaining."

Was there any "substantial protection" to the taxpayer in requiring the bond to stipulate that the holder should be entitled to the benefits of the Act under which it was issued? Plainly not. If there was any protection it was for the bondholder and not the taxpayer. The surrounding circumstances as well as the language of the section show this. The County had defaulted. The new bonds were to be issued to raise money to pay off the old ones at fifty cents on the dollar. They must bear on their very face the birthmark of repudiation. Something had to be done to make them sell, and that some-

thing was to give the holders a more effectual remedy than the old bondholders had. For this purpose the Amended Act was passed, and for this purpose the remedies afforded by it were to be prominently mentioned and stipulated for in the bond.

What was there in all this to benefit or protect the taxpayer?

The only answer to this question which has ever been suggested is that given by the Circuit Court of Appeals, which we copy entire:

> "The purpose doubtless was to compel the authorities issuing them to recognize the fact that by such stipulation they were consenting to the special and stringent remedies of the Act." (Rec. 85).

What is it that the County officers were to "recognize?" That they were issuing bonds under the Act? That they did recognize in two places on the bonds actually issued.

Was it that they were to "recognize" the fact that the bonds might be enforced by suit? This is so plainly provided for in the Act that he who runs may read.

The recognition idea is so elusive that the mind of a plain man can scarcely grasp it, but, if it were otherwise, is there any "substantial protection" to the taxpayer to arise from it, or, in other words, any substantial damage to accrue from its absence?

Suppose the County officers did or did not "recognize" what they were doing, what gain or loss was there to the County?

None has ever been suggested, and we can not imagine any.

But even if the "recognition" idea be sound and substantial as an original proposition, we think the Court erred in

applying it in this case. If Section 10 was mandatory and was not complied with the bond was void. If it was directory it was valid. There is no middle ground.

Now, judgment was rendered against the County by default and was not appealed from. It conclusively established the validity of the bonds. This case relates only to the remedy, and the statute gives that to *all judgment creditors*. This is its language:

> "Sec. 2. That in the event judgment shall be rendered *on any bond or bonds* which may be issued by the county of Taylor under the provisions of the act to which this is an amendment, or *on any coupons* of any such bond or bonds, such judgments shall constitute a lien upon all real and personal property in said county, subject to taxation under the revenue laws of this Commonwealth.
>
> "Sec. 3. If the Court rendering *such judgment* shall be of opinion that such serious obstruction is likely to be offered to the enforcement of *any such judgment* as will materially delay it, it shall, on motion of the plaintiff therein, refer the same to a commissioner, etc."

How can the Court go behind the judgment and look at the coupons upon which it was rendered and then trace those coupons to the bonds from which they were cut and then say that while it is such a judgment as the Act calls for yet it can not be enforced as the Act provides?

This we think a fatal objection to the conclusion reached by the Circuit Court of Appeals, but for obvious reasons we prefer that the Court shall dispose of the question as to whether the provision of the statute is mandatory.

There are also copious suggestions in the opinion which seem to have weighed heavily in drawing the Court to the conclusion that Section 10 was mandatory and not directory.

The opinion states that the Act is "one of the most stringent and extraordinary Acts which has come under our observation," that "its operation must be attended with unusual

harshness and extraordinary expense," that its provisions are "novel and summary" and "novel and drastic," and the conclusion is reached that "such an Act should be strictly construed, and a case clearly made out before any relief should be extended thereunder."

It might be suggested that the proper time for the inhabitants of Taylor County to have discovered the enormities of this statute was when they got the legislature to pass it and sold the bonds issued under it; but, passing that, let us see whether it deserves the animadversions so liberally bestowed upon it by the Court below.

Commencing with the assessment, we find it provided, in Section 3 of the Act, that it is to be based on the State assessment for taxes, but is to be made by a commissioner appointed by the court instead of the regular State assessor. That may be unusual, but can hardly be justly called harsh or oppressive. When the assessment is made it is to be returned into court, its filing to be advertised for three weeks, and afterward thirty days' time is to be given for exceptions. (Sec. 5.)

The opinion says that this is due process of law, and does not anywhere intimate that there is any harshness or oppression in the assessment.

Coming now to the enforcement, we find that directed to be done by judgment, and at the expiration of ninety days by execution. (Sec. 7.)

Surely that is less harsh to the taxpayer than the usual method of collecting taxes by advertisement and sale.

The opinion also states that Act is

> "a wide departure from ordinary methods for enforcing the payment of a judgment against a municipality armed with full power to assess and collect a tax to meet its obligations."

This is true, but we will be pardoned for suggesting the fact that the first set of bondholders did not find this armament sufficient to enable them to collect their bonds, and that some "wide departure" was necessary to induce others to subscribe for the second issue.

Stress is also laid in the opinion on the fact that the operation of the statute

> "must be attended with unusual harshness and extraordinary expense, growing out of the fact that separate judgments are provided for against taxpayers, upon which separate executions must go."

It is true that a suit is more expensive than a levy and sale, but the Court overlooks the fact, which appears from Hubbert's affidavit, that a levy has already been made to pay the coupons of 1896 and 1897 (Rec. 71), and that certain citizens have paid their proportions of the debt. (See Report, p. 72.) This shows that each taxpayer has had an opportunity to avoid the expense of a suit by paying his taxes, and should diminish the sympathy which the Court seems to have extended to him.

We may also properly suggest that where the taxpayer refuses to pay his taxes, and where no one can be found to act as sheriff and make him pay them, a law which subjects him to the costs of a suit can hardly be condemned on the ground of its "extraordinary expense."

It may also occur to your Honors that in a case where the ordinary remedies had proven ineffectual to coerce payment of a former issue of bonds, and where it was desired to give new bondholders a new remedy, the one which was given in this case was about as inexpensive as any which could be devised.

The Federal Reports furnish several precedents for such a statute.

In Supervisors v. Rogers, 7 Wallace, 175, a State statute empowered its courts to appoint an officer to perform any duty required to be performed under a mandamus. A Federal court sitting in that State appointed its Marshal to levy and collect a tax, and its action was affirmed by this Court. That case was also approved by this Court in

Thompson v. Allen County, 115 U. S. 559.

In Stansell v. Levee Board, 13 Fed. Rep. 846, bonds had been issued under a Mississippi statute authorizing the State courts, in the event of non-payment, to appoint commissioners to levy and collect a tax. The Federal court was applied to and afforded the relief.

In none of these cases was there any suggestion from court or counsel that there was anything harsh or oppressive in taking the power to levy and collect taxes from those who would not or could not perform their duty, and conferring it upon those who would.

There is a long line of cases, which are reviewed in Thompson v. Allen County, holding that the taxing power is a sovereign one, and must be exercised by those to whom the State has committed it, but the opinion in this case is the first to intimate that courts should hesitate to exercise such powers when so conferred.

IV.

That Hubbert was not a *bona fide* holder of the coupons upon which he obtained judgment against the County.

To this we answer that this question has passed into judgment.

V.

That the Act under which the bonds were issued has been repealed.

The question of repeal is discussed by the Circuit Judge in his opinion at page 19 of the Record.

We deem it sufficient to say that the remedy afforded by the Act was a part of the contract and was beyond the reach of repeal.

Seibert v. Lewis, 122 U. S. 284;
Seibert v. U. S., 129 U. S. 192.

We respectfully submit that the judgment of the Circuit Court of Appeals ought to be reversed.

W. O. HARRIS,
For Petitioner.

APPENDIX.

CHAPTER 483.

AN ACT FOR THE BENEFIT OF TAYLOR COUNTY, EMPOWERING IT TO COMPROMISE ITS DEBTS, ISSUE BONDS, AND LEVY AND COLLECT TAXES TO PAY THE SAME.

BE IT ENACTED, By the General Assembly of the Commonwealth of Kentucky:

Section 1. That the county of Taylor be, and it is hereby authorized and empowered to make and enter into any contract or contracts, with any person or persons, corporation or association of persons, for the compromise, purchase, or redemption of any and all bonds, coupons, judgments, or other indebtedness of said county, whether the same be due or not due, growing out of the issue of any bonds or coupons heretofore issued by said county; and said county, acting through its county court, and such agents as may be appointed by the county court of Taylor county, are hereby authorized and empowered to execute and carry out such contracts, and for that purpose it is hereby authorized to issue, negotiate, and deliver new bonds of said county, not exceeding one hundred and twenty-five thousand dollars, in such amounts as it may deem best, and on such time as the county may think proper, and bearing any rate of interest not exceeding eight per cent per annum, with coupons attached to represent the interest, payable semi-annually at such time and place as it may think best. The bonds to be signed by the county judge and county court clerk, with the seal of said county attached, and the coupons on said bonds to be signed by the clerk alone. And it shall have the right to sell all or any number of said bonds at not less than their par value, the proceeds of which may be used to buy the present outstanding bonds of Taylor county, at rates not to exceed fifty cents on the dollar, or to exchange the same with the holders of bonds of Taylor county now outstanding, upon such terms as may be agreed to by the holders and the said county court of Taylor county and its agents, upon the surrender and cancellation of the old bonds: *Provided*, that in such exchange no greater rate shall be allowed in exchange than fifty cents on the dollar for said old bonds. And the county clerk of said county shall keep a record of all bonds issued under this act, showing the date of such bond, when payable, the amount thereof, and the number

of coupons attached to each bond; which record shall also show the number and amount of bonds sold, and the number and amount exchanged for other bonds of said county. The records shall also show the number, amount of bonds, and coupons taken up and canceled by sale or exchange of the new bonds, and said record shall be open at all times to the inspection of the taxpayers of said county.

Sec. 2. That the faith and credit of the county of Taylor be, and the same is hereby, pledged to carry out, in good faith, any and all contracts made by it for the issue, purchase, compromise, and redemption of any and all bonds and coupons issued under the first section of this act; and any and all bonds and coupons issued and delivered under this act shall be valid and binding on the parties thereto; and any *bona fide* holder or owner of any such bond or coupon, issued and delivered as aforesaid, on obtaining a judgment, in any court of competent jurisdiction, against the said county, shall, if the county refuses, for thirty days after demand, to levy and proceed in good faith to have collected a tax sufficient to pay any such judgment, interest, and costs, be entitled, on application to the circuit court, or, in vacation, to the circuit judge of the seventh judicial district, after having notice thereof served on the judge of said county, to have an order made, based on the last preceding assessment, levying a tax and appointing a collector, whose duty it shall be to collect from the taxpayers of Taylor county sufficient to pay off such judgment, interest, and cost, and the cost of collecting the same; and the collector so appointed shall have all the power given by law to the collectors of State revenue and county levies, and be liable in like manner; *Provided, also*, That any collector appointed under this section shall, before he proceed to act, execute a bond, with good solvent surety, to be approved and attested by the judge of the said district, the same to be by him delivered to the Taylor county court clerk for safe keeping; and should the county court, held by county judge and justices, or by the county judge, fail, for ten days after demand in writing, to levy and proceed in good faith to collect a tax as provided in this act, then, and in that event, it is hereby made the duty of the circuit court, or judge thereof in vacation, being informed of such failure by any *bona fide* bondholder or his attorney, to levy and have collected, as in case of a judgment, a tax to pay off semi-annual interest on past due coupons of bonds issued under this act, of which application the county court or judge thereof shall have ten days' written notice.

Sec. 3. That if at any time all the justices of the peace of Taylor county shall resign, or if at any time the number of

justices, from death, resignation, or other cause, be reduced to a less number than a majority of all the justices to which, by law, said county is entitled, then, and in that event, the county judge of said county, sitting as a court, shall have and exercise all the powers of the county court of Taylor county, within the meaning and purview of this act, and possess and exercise all the powers conferred upon the Taylor county court by this act.

Sec. 4. That it shall be the duty of all collectors appointed under the provisions of this act to make monthly reports, under oath, to the county treasurer of Taylor county of all moneys collected by him or them; and such collectors shall at once pay over to the county treasurer the amount of all moneys collected by him, less the commissions allowed by law or order of the court or judge making the levy. And it is hereby made the duty of the treasurer of Taylor county to deposit all moneys collected under the provisions of this Act, so soon as he receives the same, in some solvent bank, with a paid-up capital of not less than $100,000, to the credit of Taylor county, which money shall be paid out by such bank only upon the check of the treasurer of Taylor county. And no such collector or treasurer shall have the right to use or loan said money, or any part thereof, for any purpose whatever, save and except as provided in this Act.

Sec. 5. All such collectors shall collect the entire tax in his hands, and pay the same over to the county treasurer within six months from the time the tax-books are placed in his hands for collection. And it is hereby made the duty of the sheriff of Taylor county to collect all tax levied by the county court under this act; and should he fail for ten days, after the levy of any such tax and notice to him, to execute bond, with good and sufficient surety, to be approved by the county court, then it shall be the duty of said county court to declare, by order of record, his office of tax collector forfeited. And in that case it is made the duty of the said county court to appoint a tax collector, and take bond from him, with good and approved surety, and fix, by order, the compensation of such collector. And if any sheriff or tax collector shall fail to collect or pay over the taxes, as provided in this act, to the county treasurer, such sheriff or collector so in default shall, with his sureties in his official bond, be liable to an action, on motion on ten days' notice in the Taylor circuit or common pleas courts, in which action the county of Taylor, in its own name, shall recover for any default of the sheriff or collector the amount due the county, with interest from the time it should have been paid, the costs of the action

or motion, and ten per cent damages on the amount found due and recoverable. And should the treasurer of Taylor county fail to pay over any money in his hands when ordered to do so by the Taylor county court, he and his sureties shall be liable in like manner as is herein provided in regard to sheriffs and tax collectors; and the Taylor county court, held by the county judge, shall have the right to require all sheriffs, tax collectors, and the treasurer of Taylor county to renew or give additional surety upon the official bonds of such officers, as often as he may think proper, so as at all times to have securities on said bonds good and solvent for any amount of money in their respective hands.

Sec. 6. That it shall be the duty of Taylor county to have an assessment, make a levy, appoint a collector, and have collected from the taxpayers of Taylor county, upon all property which is now or may hereafter be assessed for, and subject to, State revenue purposes, including the amount given in order to equalize law, to pay the semi-annual interest or past due coupons on all bonds issued under the provisions of this act, and also to pay off and take up the said bonds at maturity; and if the county court shall deem it proper, it may, in addition to the tax herein provided for, levy an additional tax upon the taxable property of said county to create a sinking fund to purchase any or all bonds and coupons issued under the provisions of this act.

Sec. 7. That the county court of Taylor county shall cancel all bonds and coupons purchased under the provisions of this act by writing on the face thereof, with red ink, the following: "This bond has been bought in by Taylor county, and is not to be reissued;" and the county clerk, in the presence of the county judge, after having made a record of the bonds and coupons purchased under this act, shall burn the same.

Sec. 8. *Be it further enacted*, And as an inducement to the taxpayers of Taylor county to furnish the money with which to at once purchase the outstanding bonds and debts of said county, it is hereby made lawful for the taxpayers, or any of them, of Taylor county, to pay to the county treasurer his or their taxes due, or to become due, to said county, taking his receipt therefor; and all payments so made are declared a valid payment of such a one's share of the taxes due, or to become due, on account of the present indebtedness of said county, to the extent he or they may thus pay; and if the amount of the payment or payments thus made shall be equal to or exceed the whole amount of taxes due, and to become due, by such taxpayer, to take up the bonded debt of said county, then the

taxpayer so paying shall be relieved from any further taxes under this act; and should any taxpayer pay, under this section, more than his proper quota of said indebtedness, then it shall be the duty of the county to refund to him the over-plus so soon as ascertained, or as may be agreed upon; and the treasurer of Taylor county shall keep a record-book, in which he shall open an account with the parties making advancements under this section, which book shall be carefully indexed, and show the full names of the payers, the amounts paid, and the date of payment; and the book shall be subject at all times to inspection by the parties making advances, and the Taylor county court and sheriff or collector; and the money or moneys thus collected shall be deposited by the treasurer in like manner as that taken in through the collectors, and be subject to the same restrictions in every respect; and the county court shall make the treasurer a proper allowance for his trouble under this act, to be paid out of the amount collected.

Sec. 9. That if any sheriff, collector, or the county treasurer, or other county officer having charge or control thereof, shall use, loan, or in any way misapply any money or moneys collected or raised under this act, except the commissions to which, by law, they may be entitled, or shall be a party to any such misapplication of said fund, or any part thereof, or aid or assist any one so offending, shall be guilty of felony, and, upon indictment and conviction, shall be confined to the penitentiary of this Commonwealth for a period of not less than two nor over ten years.

Sec. 10. This act shall be in force and take effect from and after its passage.

Approved March 18, 1878.

CHAPTER 306.

AN ACT TO AMEND AN ACT ENTITLED, "AN ACT FOR THE BENEFIT OF TAYLOR COUNTY, EMPOWERING IT TO COMPROMISE ITS DEBTS, ISSUE BONDS, AND LEVY AND COLLECT TAXES TO PAY THE SAME." APPROVED MARCH 18, 1878.

BE IT ENACTED by the General Assembly of the Commonwealth of Kentucky:

Section 1. That the words "twenty-five," preceding the word "thousand," in the first section of this act, be, and the same is hereby, stricken out, and the word "fifty" inserted in lieu thereof.

Sec. 2. That in the event judgment shall be rendered on any bond or bonds which may be issued by the county of Taylor under the provisions of the act to which this is an amendment, or on any coupons of any such bond or bonds, such judgments shall constitute a lien upon all real and personal property in said county, subject to taxation under the revenue laws of this Commonwealth.

Sec. 3. If the court rendering such judgment shall be of opinion that such serious obstruction is likely to be offered to the enforcement of any such judgment as will materially delay it, it shall, on motion of the plaintiff therein, refer the same to a commissioner, with instructions to ascertain and report, on a day to be by it named, the amount which it will be necessary for the holders or owners of any such property to pay in order to raise promptly, in proportion to the value of such property owned by each, a sum suffieient to pay the said judgment, and all costs of the said suit, and the costs of collecting the same, making due allowance for probable delinquencies. Upon making any such reference, the said court shall make an order, and, if need be, enforce it by process of contempt, directing the officers having charge of the books containing the last assessment for the purpose of State taxation, to deliver them to the said commissioner, to be by him used in making out his report.

Sec. 4. If, for any reason, such assessment books shall not be promptly forthcoming, the court shall provide for a new assessment under the direction and supervision of the said commissioner.

Sec. 5. Upon the completion of said report, the said commissioner shall file the same in the clerk's office of said court, and publish in a newspaper published in Taylor or Marion county, once each week for three weeks, a notice of the filing of said report, and stating that the same will be subject to exceptions, to be filed in said clerk's office until a day to be mentioned in said notice, which day shall not be less than thirty nor more than forty days from the last day on which the said notice is to be published.

Sec. 6. On a day to be named by the court in the order referring the said judgment to the commissioner, or on the first day of the next regular or special term of the said court after the expiration of the time for filing exceptions, the said exceptions shall stand for hearing; but the hearing thereof may be continued from time to time, for good cause shown, or to suit the convenience of the court.

Sec. 7. When, after such correction as the court may deem proper, the said report shall be approved and confirmed, judg-

ment shall be rendered against the parties named in the report for the amounts therein named, and at the expiration of ninety days from the date of said judgment several executions shall issue against all persons who have not then paid to the sheriff, or other officer who collects executions from said court, for the sums adjudged to be due by them respectively, which may be levied on any property subject to the State revenue tax held by the defendants, respectively, or which was owned by them at the date of the judgment.

Sec. 8. The court shall make proper orders for the safe keeping and disposition of the money to be collected under the provisions of this act; and if the amount collected shall be more than necessary to pay the judgment and costs, the residue shall be paid over to the commissioner of the sinking fund of said county, to be used for the payment of the principal and interest of bonds issued under the act to which this is an amendment.

Sec. 9. The sheriff or other officer who may collect such sums as shall be voluntarily paid to him under any such judgment shall be entitled to the same compensation which sheriffs receive for collecting taxes due to this Commonwealth.

Sec. 10. The bonds to be issued under the act to which this is an amendment shall, on their face, stipulate that the holders of any of them, or any coupon thereof, shall be entitled to the remedies for the collection of the same herein, and in the act to which this is an amendment, provided for.

Sec. 11. This act to take effect from its passage.

Approved February 27, 1882.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1903.

MARC HUBBERT, - - - - - - - *Petitioner*,

No. 31. *VERSUS*

CAMPBELLSVILLE LUMBER COMPANY, *Defendant*.

Reply to Defendant's Brief.

The undersigned in his original brief for petitioner discussed in their order the five questions raised by the affidavit filed in support of the motion to set aside the judgment of the Circuit Court. Defendant's counsel in his brief has expanded these five questions to twelve in number, and it is thought best to answer them in the order of his brief, referring to our former brief when necessary to avoid repetition.

I.

It is argued that the judgment of the court was void because the Commissioner reported and the court found that it would be necessary to levy a tax of $14,180.77 in order to raise $3,500.

The Act of February 27, 1882, under which the judgment was rendered, required the court to make "due allowance for probable delinquencies" (Sec. 3), and provided that "if the amount collected shall be more than necessary to pay the judgment and costs, the residue shall be paid over to the Commissioner of the Sinking Fund of said county, to be used for

the payment of the principal and interest of bonds issued under the Act to which this is an amendment."

A glance at the Commissioner's report will show that the majority of the assessments were for sums less than $5.00. The difficulty of levying and collecting executions for such small amounts from the population of an entire county is apparent, and the "probable delinquencies," especially among the small taxpayers, will necessarily be large. When we add to this the large expense of sending an army of deputy marshals into a county whose citizens are resisting a tax with such unanimity as to prevent the qualification of a sheriff (Rec. 71), it must be evident that the allowance made by the court for probable delinquencies and costs was not excessive. An exception to the report on this ground was made by the county, and was overruled. (Rec. 16–19.) This action of the court, even if erroneous, did not make the judgment void.

II.

That the judgment was void because the sums adjudged against the taxpayers were unequal. (Brief for respondent, p 6.)

The brief leaves the impression that the same rate of tax was not assessed on all the taxpayers, and charges that "it was designed to impose excessive levies in order that a few leading property-owners might be compelled to pay the entire debt." (P. 8.)

The mode in which the Commissioner made up his report is thus stated by him :

> "I have examined the last assessment of Taylor County as is shown by the Assessor's books in the office of the County Court Clerk, and find that it will be necessary to collect $1.40 on the $100 of the taxable property as shown by the said assessment to pay the judgment, interest, and cost in this action.

"This estimate is made after making due allowance for delinquencies, which will necessarily be larger than usual by reason of the opposition of the people to the payment of the bonded debt and the difficulty of finding the personal property." (Rec. 72.)

An examination of the assessment reported (Rec. 22 to 62) will show that this rate was accurately assessed to each and every taxpayer.

The only basis of fact left for the charge under consideration is that too much allowance was made for probable delinquencies and costs, a contention which has just been discussed.

III.

That more than "due allowance" for delinquencies was made. (Respondent's Brief, p. 9.)

This is a repetition of the two previous Assignments of Error.

IV.

That the notice published by the Commissioner of the filing of his report was insufficient. Two contentions are made under this head:

1. That the notice did not conform to the statute. The section of the Act in question reads as follows:

"SEC. 5. Upon the completion of said report, the said Commissioner shall file the same in the clerk's office of said court, and publish in a newspaper published in Taylor or Marion county, once each week for three weeks, a notice of the filing of said report, and stating that the same will be subject to exceptions, to be filed in said clerk's office until a day to be mentioned in said notice, which day shall not be less than thirty nor more than forty days from the last day on which the said notice is to be published."

The Commissioner's notice read as follows:

"NOTICE.

"Notice is hereby given that I have filed in court my report in the above case, showing the amount which it will be necessary for each of the taxpayers of Taylor County to pay, in order to pay off the judgment herein and that said report is subject to exceptions to be filed in the clerk's office until January 7th, 1901.

"DAVID L. MAY,
"Special Commissioner.

"Nov. 16–3t."

Counsel seems to argue that the Commissioner should have inserted in his notice after the word "judgment" the words "making due allowance for probable delinquencies." It is a sufficient answer to this to point out the fact that the statute does not require the contents of the report to be stated, but only "a notice of the filing of said report." Any description which would identify the report to a common intent will satisfy the statute.

2. That the report was not published in the newspaper required by the Act. (Respondent's brief, p. 12.)

The Act requires publication "in a newspaper published in Taylor or Marion county," and the publication was made in a paper published in Marion County.

The Act was complied with, but the insinuation in the brief that the Marion County paper was selected "with the expectation, or hope, that his notice would not be seen" (p. 12), demands an answer.

The largest center of population in Taylor County is Campbellsville, a village having a population of 1,341 by the last census. The writer of this brief, who directed the publication, did not then know, and does not now know, whether there was, or is, any newspaper published in Campbellsville.

Marion County adjoins Taylor, and Lebanon, its county seat, is a considerable town, having a population of 3,043, and a well-known newspaper, the "Lebanon Enterprise."

There was also another reason for the selection. The hostility of the people of Taylor County to the payment of the tax would probably have prevented the county paper from assisting in its collection, and this hostility evidently affected the "Lebanon Enterprise," though published in a different county, as is shown by the unusual difficulty the Commissioner had in getting the notice published. His first notice was prepaid, and directed to be inserted in three issues. It was inserted in one, but omitted in the other two. For this the editor apologized and promised to re-insert. This time two insertions were made and the third omitted. Sharp complaints were made to the editor, and the matter reported to the court, and then on the third trial the publication was made. (Rec. 14–17–18.)

Counsel feels warranted in saying that the delay and difficulty of publishing the notice in a newspaper published in Taylor County, if there was such a paper, would have been much greater.

V.

That the bonds did not contain the stipulation required by Section 10 of the Amended Act.

For this, see Brief for Petitioner, page 6.

VI.

This point is so vaguely stated as to be almost wholly elusive.

To the best judgment of the present writer, it is that the bonds recited that they were issued under the original Act of 1878, and that, therefore, the holder is not entitled to the remedies provided by the Amended Act of 1882.

It is a sufficient answer to this contention to call the court's attention to the fact that the Amended Act provides,

> "Sec. 2. That in the event judgment shall be rendered on any bond or bonds which may be issued by the

county of Taylor *under the provisions of the act to which this is an amendment*, or on any coupons of any such bond or bonds, such judgments shall constitute a lien upon all real and personal property in said county, subject to taxation under the revenue laws of this Commonwealth."

It will be seen from this that the Amended Act applies, and applies only, to bonds issued under the original Act.

VII.

That the Act of 1882 was repealed by the Kentucky Constitution of 1891, and statutes enacted thereunder.

To this we reply:

1. The remedy provided by the Act was a part of the contract, and could not be repealed by the State until the bonds were paid.

Seibert v. Lewis, 122 U. S. 284;
Seibert v. U. S., 129 U. S. 192.

It may be argued that if "a substantial and efficacious remedy" exists under the repealing act, or under the ordinary laws of the State, then under the principles recently laid down in Oshkosh v. Oshkosh, 187 U. S. 437, the repeal is valid.

Our answer to this is that the ordinary remedies are plainly inadequate, as is shown by the fact that the holders of the first set of bonds, who had only those remedies, settled at fifty cents on the dollar, while the second set of bondholders, who had, or thought they had, the new remedies, gave par for their bonds.

2. There has been no repeal of the Act of 1882. Counsel for respondent argues that the repeal is made by Section 59, relating to special and local acts, and by the Schedule of the Constitution of Kentucky of 1891, and seeks to prove it by quoting Section 1 of the Schedule and omitting its most material clause.

The section of the Schedule, with the omission supplied and italicized, reads as follows:

> "1. That all laws of this Commonwealth in force at the time of the adoption of this Constitution, not inconsistent therewith, shall remain in full force until altered or repealed by the General Assembly; *and all rights, actions, prosecutions, claims and contracts of the State, counties, individuals or bodies corporate, not inconsistent therewith, shall continue as valid as if this Constitution had not been adopted.* The provisions of all laws which are inconsistent with this Constitution shall cease upon its adoption, except that all laws which are inconsistent with such provisions as require legislation to enforce them shall remain in force until such legislation is had, but not longer than six years after the adoption of this Constitution, unless sooner amended or repealed by the General Assembly."

Shortly after the adoption of the Constitution the contention arose that the charters of cities, and especially rights given them to collect taxes by suit, being special or local acts, were repealed. To this contention the Kentucky court has answered that Section 59, which is the section prohibiting special legislation, is prospective only in its operation, and that the schedule saves from repeal all statutes giving a right of action to recover taxes. On this last topic we quote from the opinion:

> "When by the first provision of this schedule we read that *all rights, all actions*, and all *claims* shall continue and remain as valid as if this constitution had never been adopted, we think these words used might be applied to the right of the city to collect taxes past due and unpaid. And when it says that all *actions* are *preserved*, it embraces and includes actions for the recovery of taxes then authorized to be filed and pending in the Louisville Chancery Court, as well as any and every other action." (Long v. City of Louisville, 97 Ky. 376.)

In a later case, reported in the same volume, it is held that a local act authorizing a county to buy turnpikes was not repealed. (O'Mahoney v. Bullock, 97 Ky. 774.)

Again, in reviewing the provisions of Sections 59, 171 and 181, relied on as repealing a local statute relating to turnpikes, the court said :

> "These provisions look altogether to future legislation, and manifestly do not affect, directly or indirectly, the laws already in force. The existing special legislation on the subjects named in the various subsections of Section 59, with respect to which special acts are now prohibited, does not stand repealed by the mere force of such prohibitions. The General Assembly may repeal any of these special acts by a special act for that purpose, or by substitution of comprehensive general laws, or, with respect to such of them as may be inconsistent with those provisions of the Constitution which require legislation to enforce them, by the enactment of laws effectuating such constitutional provisions. Such special acts as are inconsistent with those provisions of the Constitution which do not require legislation to enforce them stand repealed." (Pearce v. Mason County, 99 Ky. 364.)

Again, in a case involving the right of a municipality to collect taxes by suit under a special or local statute, the court elaborately examines and reaffirms its previous rulings. (Covington v. Highlands, 24 Ky. Law Rep. 433.)

It is also contended by respondent that Sections 1839–1840 of the Kentucky Statutes, providing for levying taxes for county purposes, work an implied repeal of the Act of 1882. To avoid such repeals the legislature enacted the following sections of the same compilation :

> "No new law shall be construed to repeal a former law, as to any offense committed against the former law, nor as to any act done, any penalty, forfeiture, or punishment incurred, or any right accrued, or claim arising under the former law, or in any way whatever, to affect any such offense or act so committed or done, or any penalty, forfeiture, or punishment so incurred, or any right accrued, or claim arising before the new law takes effect, save only that the proceedings thereafter had shall conform, so far as practicable, to the laws in force at the time of such proceedings. If any penalty, forfeiture, or

punishment be mitigated by any provision of the new law, such provision may, by the consent of the party affected, be applied to any judgment pronounced after the new law takes effect. (Ky. Stats., Sec. 465.)

"All laws and parts of laws which authorize any county or subdivision thereof, or any city or town or incorporated district to become a stockholder in any company, association or corporation, or to obtain or appropriate money for, or to loan its credit to any corporation, association or individual, except for the purpose of constructing or maintaining bridges, turnpike roads or gravel roads, are hereby repealed. But nothing in this act contained shall in any wise affect subscriptions to stock, the obtaining or appropriating of money, or loaning of credit, that may have been made or done before the passage of this act." (Ky. Statutes, Sec. 907.)

VIII.

On the principle of *omne ignotum pro magnifico* this is respondent's strongest point. It is omitted in his brief.

IX.

That the judgment of the Circuit Court is void for want of personal service of process.

This is another way of stating the proposition that the Act of 1882 does not provide for due process of law. Section 7 of the Act provides that upon the confirmation of the report, judgment shall be rendered against the taxpayer and that upon this judgment execution shall issue "which may be levied on any property subject to the State revenue tax held by the defendants respectively."

This is in strict conformity to the ordinary mode of collecting taxes in Kentucky, except that the paper held by the collecting officers is in one case called an execution and in the other a tax-bill. If the execution may be levied on all prop-

erty, real and personal, which is subject to the tax, so may the tax-bill, as is shown by the following sections of the statute:

> "The sheriff, from and after the first day of March in each year, shall collect the taxes due in his county, and upon failure by the person bound therefor to pay the same, may distrain the goods and chattels owned by or in the rightful possession of the persons from whom the tax is due, notwithstanding the existence of any lien upon the same; and may proceed to sell the title of such person in so much thereof as will pay the tax due and all costs, in the mode prescribed by law." (Ky. Stats., Sec. 4148.)
>
> "If there be no personal property that the sheriff or tax collector can distrain for taxes due, and the same shall not be paid by the first day of July, the sheriff or tax collector shall sell for cash any real estate belonging to or listed by such delinquent taxpayer, or so much thereof as will pay the taxes due and his commission." (Ky. Stats., Sec. 4151.)

The mode of collecting the tax by levy on all the taxpayer's property subject to the tax is, therefore, the usual mode in Kentucky and must be in all the States, and its validity can not be affected by the name of the writ or paper under which the officer acts.

The objection, then, is not to the personal judgment or execution of *fieri facias*, for the precise burden imposed by these exists in all tax cases.. The objection, if any, relates to the mode in which that burden was imposed, namely, the assessment and the notice given, or opportunity afforded, to the taxpayer to contest. This subject is fully gone over by Your Honors in Turpin v. Lemon, decided at last term and reported in 187 U. S. 51.

It is there held that in proceedings for condemnation or for the imposition of special taxes, notice to the owner is necessary, but that in the imposition of general taxes notice may, in many causes, be entirely dispensed with.

We conceive that the tax involved in this case is a general tax, levied by a special procedure, but, whichever it be, the

notice afforded the taxpayer was ample. In the first place, the debt was established by suit in regular form, with service of process on the county. In the second place, in imposing the burden on the taxpayer the State assessment was adopted, as required by Section 3 of the Act. Then a publication for more than three weeks was made, as required by Section 5.

Your Honors said in the Turpin case, quoting from former opinions:

> "It is sufficient to observe here that by 'due process' is meant one which, following the forms of law, is appropriate to the case and just to the parties to be affected. It must be pursued in the ordinary mode prescribed by the law; it must be adapted to the end to be attained; and wherever it is necessary for the protection of the parties, it must give them an opportunity to be heard respecting the justice of the judgment to be sought. . . .
>
> "In Bell's Gap R. R. v. Pennsylvania, 134 U. S. 232, it was held that the process of taxation did not require the same kind of notice as is required in a suit at law, or even in proceedings for taking private property under the power of eminent domain. It involves no violation of due process of law when it is executed in accordance to customary forms and established usages, or in subordination to the principles which underlie them." (Turpin v. Lemon, 187 U. S. 58–9.)

Again, in Gledden v. Harrington, decided April 6, 1903, and not yet reported, the court said:

> "Although with respect to this class of taxes we have never had occasion to determine exactly what the Fourteenth Amendment required, we have held that the proceedings should be construed with the utmost liberality, and while a notice may be required at some stage of the proceedings, such notice need not be personal but may be given by publication or by posting notices in public places. It can only be said that such notices shall be given as are suitable in a given case, and it is only where the proceedings are arbitrary, oppressive or unjust that they are declared to be not due process of law."

The long-settled mode of assessment in Kentucky requires no notice to the taxpayer, as is indicated by the following sections of the statute:

> "Real estate, or any interest therein, shall be listed in the county or district where situated, against the owner of the first freehold estate therein. If the owner fails to list the same, the assessor shall, nevertheless, list all lands in his county; and to enable him to ascertain the person in whose name to make the list, he is empowered to swear witnesses, and their statements must be put in writing and returned with the tax-book, and a note or reference made to the proof in the listing of the land. (Ky. Stats., Sec. 4049.)
>
> "Any person or corporation claiming to be erroneously charged with any tax upon property not owned by them, may, at any time not later than the next regular county court after they have received notice of the same, by demand being made upon them to pay the tax, offer evidence in support of said complaint to the county court of the county in which the assessment was made; and if said court, after due consideration of the evidence, finds that they were not the owners of the property assessed, it may correct the same by releasing them from the payment of the tax thereon; and it shall be the duty of the court to have the property immediately listed as against the rightful owner thereof. County courts shall have further authority, after giving further notice to the Sheriff and Assessor, to correct any mere clerical errors in the assessment, and any correction made without such notice shall be void. The right of appeal from the decision of the court as herein provided shall apply to all final orders of court made under this section; and it shall be the duty of said court to certify its action to the Auditor of Public Accounts and sheriff, as provided in said preceding section." (Ky. Statutes, Sec. 4250.)

It must be presumed that these provisions of the law were complied with by the State officers before the matter got into the Federal court, and after it got there another opportunity for correcting errors was afforded by the filing of the Commissioner's Report, the advertisement of it for three weeks and by the additional thirty days' time allowed for exceptions by Section 5 of the statute.

This is not only "*due* process of law," but "good measure, pressed down, and shaken together, and running over."

X.

That Hubbert was not the real owner of the bonds.

Surely this matter is concluded by the judgment against the county. It is well settled that judgments against corporations, both private and public, are conclusive upon their members or stockholders.

> "There is no reason why the members of a corporation should be allowed to contest a creditor's claim twice, once in the suit against the corporation through the corporate agents, and again in the suit brought to charge them individually." (Morawetz on Corporations, Sec. 619; see also Angell & Ames, Sec. 629.)

XI.

That the Act of 1882 is contrary to the provisions of Sections 27 and 28 of the Kentucky Constitution, distributing the power of government into three branches.

Respondent relies on an extract from the opinion of the Kentucky court in Pennington v. Woolfolk, 79 Ky. 16, to the effect that

> "the power to impose taxes is legislative and can not be conferred under our Constitution upon a strictly judicial tribunal or officer."

The act under consideration in that case conferred upon the county court the general power of assessing delinquent taxes, and its constitutionality was upheld on the ground that the county court was not a "strictly judicial tribunal."

It has never been held in Kentucky that such powers may not be conferred on circuit courts. The subsequent cases merely follow the decision of this court in Thompson v. Allen County by holding that in the absence of legislative authority

such courts can not under their general equity powers levy or collect taxes.

McLean County v. Brent, 81 Ky. 254.

Baldwin v. Hewitt, 88 Ky. 673.

Grand Rapids Co. v. Trustees, 102 Ky. 556.

The imposition or levy of the tax upon the taxpayers as a body is in its nature an exercise of the law-making power, which the legislature doubtless can not delegate to the courts. But has that been done in this case?

Section 2 of the Act of 1882 provides that if any judgment is rendered or any bond issued under the Act to which it is an amendment,

> "Such judgment shall constitute a lien upon all real and personal property in said county subject to taxation under the revenue laws of this Commonwealth."

This made the debt of the county the debt of its individual citizens, as was held in Supervisors of Lee County v. Rogers, 7 Wallace, 175, where the court said of a statute similar to the one here involved,

> "This section is but a modification of the law of England and of the New England States, which provides for the execution of a judgment recovered against a county, city or town against the private property of any individual inhabitant, giving him the right to claim contribution from the rest of the people."

Such statutes make the public debt a debt of all the citizens, and thereby constitute a legislative levy, as was said by the District Court in Stansell v. Levee Board, 13 Federal Reporter, 851.

> "The order of the court does not undertake to levy the tax or to change (charge?) it. The levy was made by the legislature in the act of incorporation."

Statutes imposing personal liability on citizens for the debts of municipal corporations are elaborately discussed and upheld by the Maine court in Eames v. Savage, 77 Me. 212, and 52

Am. Reports, 751. It is there shown that such a liability is the rule without a statute in England and New England, and that the constitutionality of a statute imposing it can not be doubted. It is analogous to the personal liability imposed upon the stockholders of a private corporation, and in both cases the judgment against the corporation is conclusive as to the debt upon the shareholder or citizen.

Morawetz on Corporations, Sec. 618–619.

Angell & Ames, Sec. 629.

That the enforcement of municipal debts directly against the taxpayer is a common practice in this country is shown by the following extract from the opinion in U. S. v. Johnson, 6 Wall. 6 :

> "Remedies on judgments against municipal corporations partook of the same diversity in the different districts as that appearing in the modes of process to enforce judgments recovered against private persons. Judgment against such a corporation might be enforced in one district by levying the execution, as issued against the corporation, upon the private property, personal or real, of any inhabitant of the municipality, while in another the appropriate remedy, in case the execution against the corporation was returned *nulla bona*, was *mandamus* to compel the proper officers of the corporation to assess a tax for the payment of the judgment."

Upon what ground then can it be doubted that the legislature of Kentucky had power to make the citizens of Taylor County liable for judgments rendered upon its bonds, and to provide for the enforcement of this liability by proceedings in court ?

XII.

That a motion to set aside a void judgment is proper procedure.

This we do not dispute.

Respectfully submitted by

W. O. HARRIS,
For Petitioner.

No. 692

Brief of Macpherson for Resp't.

Office Supreme Court U.S.
FILED
APR 1 1902

Filed April 29, 1902.

Supreme Court of the United States.

MARC HUSSEMY, ... Petitioner

vs.

CAMPBELLSVILLE LUMBER CO., ... Defendant

BRIEF FOR CAMPBELLSVILLE LUMBER CO. ON PETITION FOR CERTIORARI.

Ernest Macpherson,
Counsel

Supreme Court of the United States.

MARC HUBBERT, ... Petitioner,

vs.

CAMPBELLSVILLE LUMBER COMPANY, . . . Defendant.

BRIEF FOR DEFENDANT ON PETITION FOR CERTIORARI.

It is conceived to be appropriate to state the case for the defendant, in order to controvert mistakes in the recital of facts made in the petition for the writ of *certiorari* and in the brief accompanying the petition.

The petitioner, Marc Hubbert, brought a common law action in the circuit court of the United States, for the then district of Kentucky, against Taylor county, Kentucky, on certain coupons of bonds alleged to have been issued by the county, and obtained judgment, by default, for the sum of $2,963.13, with interest thereon at the rate of 6 per centum per annum from the 10th day of April, 1899 (the date of the judgment), until paid. An execution was issued and returned "no property found." In the same case, at a subsequent term of the court, on the 13th day of July, 1900, the plaintiff therein, Marc Hubbert, moved the court to refer the action to a commissioner, with instructions to ascertain and report, on a day to be named, the amount which it would be necessary for the owners or holders of real and personal property in Taylor county, subject to taxation under the revenue laws of the State, to pay, in order to raise promptly in proportion to the value of such property owned by each, a sum sufficient to discharge the judgment and the costs of collecting it; and on the 16th day of July, 1900, the motion was sustained, and in accordance therewith an order was entered, referring the case to a commissioner therein appointed. An objection to

the motion was made by Taylor county and overruled, and thereafter the commissioner made a report, in which he assessed against certain, not all, of the property owners of Taylor county various sums of money, amounting in the aggregate to $14,180.77 (Record, page 95). The commissioner also showed that he had made a publication of a notice of the filing of his report in the Lebanon Enterprise, a newspaper published in Marion county, Kentucky, which notice may be found in the Record at page 95. On the 12th of January, 1901, this report was confirmed (Record, page 24) and a judgment was rendered thereon against all the taxpayers and property holders of Taylor county, named in the report. The judgment declared:

> "It is considered that the said report be, and the same is, hereby approved and confirmed, and that the plaintiff, Marc Hubbert, is entitled to recover judgment against *each of the taxpayers* in said report *for the amounts therein named*, and that at the expiration of ninety days from this date several executions shall issue against *all said perons* who have not *then paid to the marshal of this court* the sums reported to be due by them respectively, which executions may be levied *on any* property subject to taxation for State revenue purposes held by the defendants or which were so held by them at the date of the judgment." (Italics ours.)

By this last judgment Hubbert's original judgment for $2,963.13 with interest thereon at the rate of 6 per centum per annum from the 10th day of April, 1899, was expanded into a judgment in his favor for the sum of $14,180.77. The defendant in error before resorting to these anomalous proceedings never made any demand upon the officers of Taylor county, having control of its fiscal affairs, to assess, levy or collect any tax to pay his first judgment, and never filed a petition for a mandamus.

The record shows that no actual notice of this judgment

was ever given to any of the taxpayers of Taylor county; that no one of them had ever been a party to the action, or had entered his appearance; that no summons or other process was ever issued against any one of these people who were required to pay these moneys to the marshal,, and that if each of the taxpayers had complied with the judgment of the 12th of January, 1901 Marc Hubbert would have received, through the marshal, nearly five times the amount of his original judgment on his coupons.

It appears on the face of the judgment and report, that the commissioner did not assess or levy the sums imposed upon the various property owners in accordance with the rule of uniformity, or "in proportion to the property owned by each taxpayer." Executions on the last judgment were issued against ten (Record, page 103, paragraph 5,) of the property owners of Taylor county, and among these against the Campbellsville Lumber Company, defendant herein, for the sum of $123.76 and costs. These ten executions, if paid, would have satisfied Hubbert's original judgment and costs. The execution was the first knowledge had by the Company of the action or proceeding, and promptly thereupon it moved the court to set aside the judgment against the company, and to quash or recall the execution (Record, page 98). Affidavits in support of the motion were filed by the lumber company (Record, pages 98 to 103.)

It will readily be seen that if the ten taxpayers, including Campbellsville Lumber Company, against whom executions were issued, had promptly settled with the marshal, or with Hubbert, they would thereby have served notice upon other bondholders that these ten stood ready to assume the entire indebtedness of Taylor county; for if they were thus liable to Hubbert, any other holder of bonds or coupons could institute a similar proceeding, obtain judgment without notice, have another like assessment, and issue his execution against the same ten individuals, and this process could be repeated, until they had paid the whole $125,000 of the railroad obligations of the county.

The motion of the Campbellsville Lumber Company to set aside the judgment against it in the circuit court for the Kentucky district was overruled, and by writ of error the case was taken to the United States Circuit Court of Appeals for the Sixth Circuit, which reversed the judgment of the court below.

The proceedings of the petitioner, Hubbert, in the circuit court, were sought to be justified under the provisions of a private and special act of the Legislature of Kentucky, entitled, "An Act to amend an Act entitled 'An Act for the benefit of Taylor county, empowering it to compromise its debts, issue bonds, and levy and collect taxes to pay the same, approved March 18, 1878,' which was approved February 27, 1882." This act is published as an appendix to petitioners' brief at page 18. None of the bonds of Taylor county were issued under this act of 1882.

Several objections were made by Campbellsville Lumber Company to the judgment of the circuit court. The act was "for the purposes of this case" assumed to be constitutional by the Circuit Court of Appeals, which reversed the lower court, however, on one only of the points made by the Lumber Company. The Circuit Court of Appeals held that the act of 1882, under which ten of the two thousand and odd taxpayers of Taylor county could be forced to pay the entire railroad indebtedness of the county was "one of the most stringent and extraordinary acts which has come under our observation;" and that section 10 of the act which reads, "The bonds to be issued under the Act to which this is an amendment shall, on their face, stipulate that the holders of any of them, or any coupon thereof, shall be entitled to the remedies for the collection for the same herein, and in the Act to which this is an amendment, provided for," was mandatory to the extent that in the absence of this stipulation in the bonds the stringent and extraordinary remedies provided in the Act of 1882, were unavailable.

The statement in the petition for the writ of *certiorari* that "the principal ground, and the one upon which the case

turned in the Circuit Court of Appeals, was that the bonds did not contain a stipulation to the effect that the holder should be entitled to the benefit of the provisions of the Act under which they were issued," is erroneous. The bonds were issued under the Act of March 18, 1878, which did not contain the stipulation commanded by the Act of 1882. The Circuit Court of Appeals so decided and the record (page 102) shows the fact and form of the bonds.

In the brief for petitioner it is said at page 7 that "its (the opinion of the Circuit Court of Appeals) practical effect will be to enable the county to continue to repudiate its entire bonded debt of $150,000.00." There is nothing in the opinion to warrant this statement. The Circuit Court of Appeals was careful to say (Record, page 125): "We are not to be understood as casting doubt upon the validity of the bonds as evidence of a valid county indebtedness. No such question is here involved." These bondholders are left with all the remedies given by the laws of Kentucky to other holders of similar municipal obligations. Equally erroneous is the assertion in petitioner's brief (page 9) that "it might be suggested that the proper time for the inhabitants of Taylor county to discuss the enormities of this statute was when *they got the* Legislature to pass it and sold the bonds issued under it." No bonds were ever issued under this Act of 1882; and there is no evidence in the record or elsewhere that the "inhabitants," and particularly Campbellsville Lumber Company, "got the Legislature to pass" the Act, and such is not the fact. The bondholders procured the passage of the Act, and the taxpayers of Taylor county never knew of its existence, until it was resurrected in the circuit court for the Kentucky District.

It is intimated in petitioner's brief that the Circuit Court of Appeals decided that a Federal Court could not enforce a State statute giving a particular remedy for the enforcement of taxes; and Supervisors v. Rogers, 7 Wallace, 175, is cited as sustaining the contrary doctrine. The opinion of the Circuit Court of Appeals (Record, page 120, paragraph 3)

cites and approves the Rogers case. But this question was never argued by counsel for the lumber company and could not arise in the case. It may be proper, however, here to say that the Kentucky courts have uniformly held that the power to assess or levy taxes can not, under the Constitution of this State, be conferred upon a strictly judicial tribunal. Pennington v. Woolfolk, 79 Ky., 16; Slaughter v. City of Louisville, 89 Ky., 121, 122, and in numerous other cases.

It seems to counsel for Campbellsville Lumber Company that under the decisions of this court the petitioner, Marc Hubbert, does not present a case warranting the issuance of the writ of *certiorari*. "It is a power which will be sparingly exercised, and only when the circumstances of the case satisfy us that the importance of the question involved, the necessity of avoiding conflict between two or more courts of appeal, or between courts of appeal and the courts of a State, or some matter affecting the interests of this nation in its internal or external relations, demands such exercise." Forsyth v. Hammond, 166 U. S., 506.

This case is not important in a monetary sense. It involves only $123.76 and the costs. It does not involve the amount even of Hubbert's claim, for there is nothing in the judgment of the Circuit Court of Appeals to prevent its collection. It does not involve or in any way affect the total bonded indebtedness of Taylor county. The case is not important in any abstract legal way. There is nothing novel in the decision of a court that the provisions of a tax law are mandatory. "All statutes are mandatory which expressly or by implication limit the amount of taxes which may be levied." Cooley on Taxation, 2nd Ed., 429, and see French v. Edwards, 13 Wallace, 506. Lyon v. Alley, 130 U. S., 185.

In passing upon the petition another consideration should not be overlooked. "Marc Hubbert, at the time of the institution of said suit was not a *bona fide* holder or owner of the coupons or bonds upon which he obtained judgment," but "was selected by the bondholders or owners of said bonds and coupons, they being residents of the State of Kentucky,

for the purpose, by a fictitious transfer to him, of obtaining jurisdiction in a Federal Court in Kentucky." Record, page 100, paragraph 5. See Lake v. Dudley, 173 U. S. 243.

The Campbellsville Lumber Company asks that the petition for the writ be denied.

Respectfully submitted,

ERNEST MACPHERSON,

Counsel for Campbellsville Lumber Co.

FILE COPY.

Supreme Court of the United States,

OCTOBER TERM, 1902.

NO. 220.

Office Supreme Court U. S.
FILED
APR 13 1903
JAMES H. McKENNEY,
Clerk.

MARC HUBBERT, - - - - - - - - Petitioner

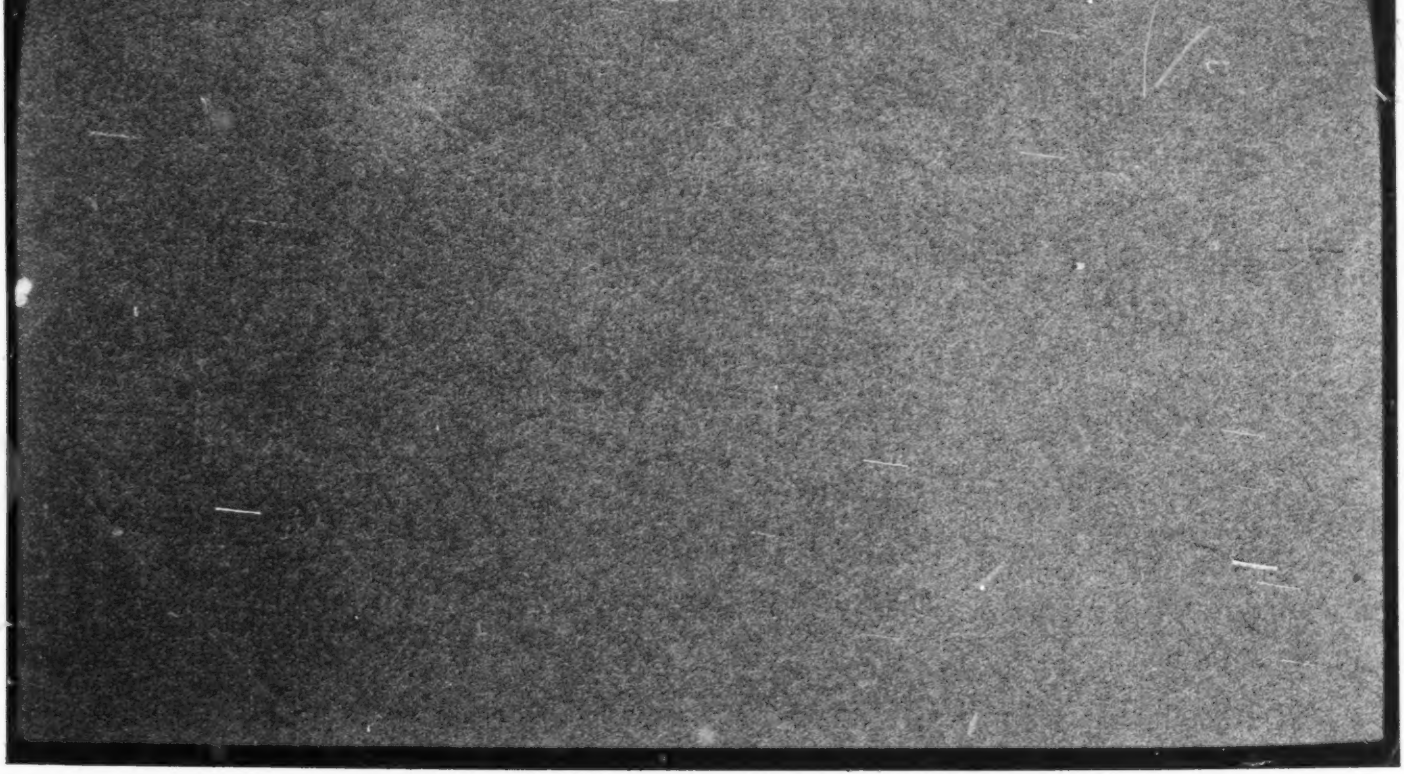
vs.

CAMPBELLSVILLE LUMBER COMPANY.

Brief of Argument for Respondent.

ERNEST MACPHERSON,
COUNSEL.

Geo. G. Fetter Printing Co., Louisville.



No. 293.

Supreme Court of the United States

OCTOBER TERM, 1902.

MARC HUBBERT, - - Petitioner,

vs.

CAMPBELLSVILLE LUMBER COMPANY, - - - - - - Respondent.

Brief for Respondent.

This case is before the Court on writ of *certiorari* to the United States Circuit Court of Appeals for the Sixth Circuit to review a judgment which reversed a judgment of the Circuit Court for the Western District of Kentucky, which overruled a motion of the Campbellsville Lumber Company to set aside, as void, a judgment rendered, and execution against it in a case to which it was never in any way a party. See same case below, 50 C. C. A., 435.

Marc Hubbert brought a common-law action in the Circuit Court of the United States for the then District of Kentucky against Taylor County, Kentucky, on coupons of bonds issued by the county, and obtained judgment by default for the sum of $2,963.13, with interest at the rate of 6 per centum per annum from the 10th day of April, 1899 (the date of the judgment), until paid. An execution was issued and returned "No property found." In the same case, at a subsequent term of the court, on the 13th day of July, 1900, Hubbert moved the court to refer the action to a commissioner, with instructions to ascertain and report, on a day to be named, the amount which it would be necessary for the owners or holders of real and personal property in Taylor county subject to taxation under the revenue laws of the State, to pay, in order to raise promptly in proportion to the value of such

property owned by each, a sum sufficient to discharge the judgment and the costs of collecting it, making due allowance for probable delinquencies; and on the 16th day of July, 1900, an order was entered, referring the case to a commissioner therein appointed, with orders to ascertain and report, on or before the time in the order fixed, the amount which it would be necessary for the owners or holders of all real and personal property in Taylor county subject to taxation under the revenue laws of the State of Kentucky to pay, in order to raise promptly and in proportion to the value of such property owned by each, a sum sufficient to pay the judgment and all costs of the suit and the costs of collecting the same, making due allowance for delinquencies as above stated. An objection to the motion was made by Taylor county and overruled, and thereafter the commissioner made a report, in which he assessed against many, but not all, the property owners of Taylor county, various sums of money, amounting in the aggregate to $14,180.77 (Record, page 62). The commissioner also showed that he had made a publication of a notice of the filing of his report in the Lebanon Enterprise, a newspaper published in Marion county, Kentucky, which notice may be found in the Record at page 19. On the 12th of January, 1901, this report was confirmed (Record, page 21) and a judgment was rendered thereon against all the taxpayers and property holders of Taylor county named in the report. The judgment declares:

> "It is considered that the said report be, and the same is, hereby approved and confirmed, and that the plaintiff, Marc Hubbert, is entitled to recover judgment against *each of the taxpayers* in said report *for the amounts therein named*, and that at the expiration of ninety days from this date several executions shall issue against *all said persons* who have not *then paid to the marshal of this court* the sums reported to be due by them respectively, which executions may be levied *on any* property subject to taxation for State revenue purposes held by the defendants or which were so held by them at the date of the judgment." (Italics ours.)

By this last judgment Hubbert's original judgment for

$2,963.13 with interest thereon at the rate of 6 per centum per annum from the 10th day of April, 1899, was expanded into a judgment in his favor for the sum of $14,180.77. The petitioner, before resorting to these anomalous proceedings, never made any demand upon the officers of Taylor county, having control of its fiscal affairs, to assess, levy or collect any tax to pay his first judgment, and never filed a petition for a mandamus.

The record shows that no actual notice of this judgment was ever given to any of the taxpayers of Taylor county; that no one of them had ever been a party to the action, or had entered his appearance; that no summons or other process was ever issued against any one of these people who were required to pay these moneys to the marshal, and that if each of the taxpayers had complied with the judgment of the 12th of January, 1901, Marc Hubbert would have received, through the marshal, nearly five times the amount of his original judgment on his coupons.

The coupons sued on were cut from bonds which on their face recited that they were "authorized by an Act of the General Assembly of the Commonwealth of Kentucky, Approved March 18, 1878." The requirements of this Act were ignored by the petitioner. The Act is published in full as Appendix A to this brief.

The proceedings of the petitioner in the Circuit Court, without judicial precedent and so shocking in their results, were, and are sought to be, justified under the provisions of a special and private act of the Legislature of Kentucky, entitled "An Act to amend an Act entitled 'An Act for the benefit of Taylor county, empowering it to compromise its debts, issue bonds and levy and collect taxes to pay the same, approved March 18th, 1878,' approved February 27, 1882." The act is published in full as Appendix B to this brief. The Act of 1882 was not mentioned in the bonds or coupons of the petitioner, nor did he comply with its terms, and particularly section 10 thereof, which is in these words:

> "Sec. 10. The bonds to be issued under the act to which this is an amendment, shall, on their face, stipulate that the holders of any of them, or any coupon thereof, shall be entitled to the remedies for the col-

lection for the same herein, and in the act to which this is an amendment, provided for."

It appears on the face of the judgment and report, and will be shown more in detail hereafter, that the commissioner did not assess or levy the sums imposed upon the various property owners in accordance with any rule of uniformity, or in proportion to the property owned by each taxpayer. Executions on the last judgment were issued against ten of the leading property owners of Taylor county, and among these against the Campbellsville Lumber Company, respondent herein, for the sum of $123.76 and costs. This execution was the first knowledge had by the lumber company of the action or proceeding, and promptly thereupon it moved the court to set aside the judgment against it and to quash or recall the execution (Record, page 65). Affidavits in support of the motion were filed by the lumber company (Record, pages 64 to 72). The motion was overruled, and thereafter, by writ of error, the order of 28th of May, 1901, overruling its motion was brought for revision before the United States Circuit Court of Appeals for the Sixth Circuit, which reversed as void the judgment of the Circuit Court for the Western Kentucky District; and by *certiorari* the case is in this court for review.

Argument.

At the outset it should be understood that the respondent is not opposing the payment by Taylor county of any of its obligations, nor the imposition of just assessments or taxes upon persons or property in the county; nor to any proceedings which shall compel the fiscal officers of the county to perform their duties. The Campbellsville Lumber Company is a mere private corporation, doing business in Taylor county, and has no voice or vote in the selection of public officials. It stands ready to pay promptly its share of the public burdens of the county. It does not seek to impair the validity or collectibility of the bonds of the county.

Respondent objects to the proceedings had in the Circuit Court, because if they are allowed to stand, the Lumber

Company and a few of the other property owners may be compelled to pay the entire railroad indebtedness of the county, without giving it any hearing and without reference to any principle of equality or uniformity in the imposition of the burden.

I.

> "The remedy is statutory only, and every court which takes jurisdiction for its enforcement is limited in its powers by the statute under which alone it can act." (Chief Justice Waite, in East Tenn., Va. and Ga. R. Co. v. Southern Tel. Co., 112 U. S., 306, bk. 28, L. ed., 746.)

If the Act of 1882 be valid and available to Hubbert, its provisions were not followed in the court below. Section 3 is in part as follows:

> "If the court rendering such judgment (on bonds or coupons) shall be of opinion that such serious obstruction is likely to be offered to the enforcement of any such judgment as will materially delay it, it shall, on the motion of the plaintiff therein, refer the same to a commissioner with instructions to ascertain and report, on a day to be by it named, the amount which it will be necessary for the holders or owners of any such property to pay, in order to raise promptly in proportion to the value of such property owned by each a sum sufficient to pay the said judgment and all costs of the said suit and the costs of collecting the same, making due allowance for probable delinquencies."

The petitioner, Hubbert, in support of his motion to refer, filed, on the 13th day of July, 1900, his affidavit (Record, page 70) stating that public sentiment of the citizens was hostile to the tax, and that there was no sheriff in the county.

There was no fact stated in the affidavit to show that the county officers had failed to levy taxes for the payment of the bonds; there was no statement that any demand had ever been made upon any official of the county to perform any

duty which had been refused; there was and could have been no statement made showing that a sheriff was a necessary officer in the collection of taxes; there was no fact intimated or stated in regard to the "collector" of the tax prescribed by law. It stated generally and superficially the conclusions of the pleader or draftsman. This affidavit was the only basis of the "opinion" of the Circuit Court that a commissioner should be appointed, and this was done by the order of the 13th of July, 1900 (Record, pages 13 and 14), in terms following the language of section 3, above quoted. Hubbert's judgment (Record, page 13) was for $2,963.13, with interest from the 10th of April, 1899. The commissioner had no right, if legally appointed under the Act of 1882, or under the order of the court appointing him, to do more than to ascertain and report the amount which it would be necessary to raise in order to pay promptly $2,963.13 and the interest thereon and costs. He reported, however, that it would be necessary to raise $14,180.77 (Record, page 62). Let us suppose the costs to amount to $500.00, a monstrous supposition; this would have required say, $3,500.00, at the outside, to pay the debt, interest, costs and costs of collection; and had this amount only been assessed against the property owners of the county, it would have satisfied, and more, any sort of just claim Hubbert could have desired to enforce.

There was no authority in the Act of 1882 to do more than this, and the levy, assessment, action or proceeding being by virtue of a special statutory power in relation to taxation anything done by the commissioner or by the court not by the act expressly authorized was void.

A tax not assessed as provided by law can not be enforced. Cooley on Taxation, 2d edition, page 429; East Tennessee, etc., R. R. v. Morristown (Tenn. Chan., 1895), 35 S. W. Rep., 771; Clegg v. State, 42 Texas, 609; People v. Central Pac. R. R. Co., 83 California, 398.

II.

The assessments and levies made by the commissioner were not according to the rule of uniformity and equality commanded by the Constitution of Kentucky, nor according

to the expressed terms of the act under which the pretended levies herein were made.

The present Constitution of Kentucky, section 171, contains this clause in relation to taxes:

> "They shall be uniform upon all property subject to taxation within the territorial limits of the authority levying the tax."

The Court of Appeals of Kentucky held, in the case of Holzhauer v. City of Newport, 15 Kentucky Law Reporter, 188, that while this constitutional provision was not in the former Constitution, it is but declaratory of what has always been the law of taxation in this State.

In the report of the commissioner (Record, page 39) under the heading, "Dist. No. 3," the respondent was thus assessed:

THE CAMPBELLSVILLE LUMBER COMPANY.

Land	$1,000.00
Town Lots	850.00
Personal	6,990.00
Total	8,840.00
Tax	123.76

This sum of $123.76 is nearly one twenty-third of the entire judgment which Hubbert recovered against Taylor county. The commissioner's report shows that the assessed value of the property in Taylor county subject to taxation under the revenue laws of Kentucky is about $1,000,000.00, and he reported the Campbellsville Lumber Company as the owner of property subject to taxation to the amount of $8,840.00, which is less than one one hundred and thirteenth of the whole. But, instead of assessing the Campbellsville Lumber Co. in this proportion, the commissioner levied a tax nearly five times as great as the proper ratio. The inequality and absurdity of his assessments appear time and again in the report which was confirmed and made part of the judgment. For example, the Louisville & Nashville Railroad Company is put down as owning $51,960.00 of property subject to assessment in the county (Record, page 62); the plaintiff obtains a judgment against it for $727.44. In other words, this road owns about one-twentieth of the

property in the county, but was assessed for about one-fourth of Hubbert's claim.

The same disproportion occurs on the same page in the assessment against the Bank of Campbellsville of $700.56. The railroad, the bank and the lumber company were assessed for $1,551.76, more than half of Hubbert's claim.

"A levy upon property, in excess of the proportionate amount necessary to be levied upon it to produce the sum required to be raised is unauthorized by law." Porter vs. Rockford, etc., R. Co., 76 Ill., 564.

In Commonwealth v. Hamilton Manufacturing Co., 12 Allen (Mass.), 300, it was said:

> "The decisive reason why it can not be supported as a tax on property . . . is, it is not laid according to any rule of proportion whatever, but is imposed only on the corporations designated in the act without any reference to the amount required to be raised by taxation for public purposes," etc.

There was no mistake, unintentional error, or clerical misprision in any of the assessments or levies. It was designed to impose excessive levies in order that a few leading property owners might be compelled to pay the entire debt. The excessive levies were distributed on the whole roll.

> "All statutes are mandatory which expressly or by implication limit the amount of taxes which may be levied. When these are exceeded by a sum which is spread upon the whole roll, the whole levy is void. The levy is in excess of the jurisdiction of the officers, and will be as deficient in the legal competency to make out a valid charge as if made without any authority whatever." Cooley on Taxation, 2d Ed., 429, citing many cases, including Commonwealth vs. Savings Bank, 5 Allen, 428, 430; Huse vs. Merriam, 2 Greenl., 375, 376; Case vs. Dean, 16 Mich., 12.
>
> "Unjust discrimination in imposing taxation when inequality is necessarily produced has never met the approval of this court, but, on the contrary, has always been held to be unconstitutional," etc. Re-

mark of Judge Pryor in Cin., N. O. & T. P. R. R. Co., etc., vs. The Commonwealth, 81 Ky., page 509.

It is elemental and fundamental law that where constitutional or statutory provisions require equality and uniformity of taxation, conformity to their requirements is an imperative prerequisite to the validity of the tax or assessment imposed in a State or municipality where such provisions are declared.

If a Federal Court in Kentucky may assess and levy taxes, something that no State Court of general jurisdiction may do, the court should be governed by the same principles as rule the conduct of assessors generally.

III.

In "making due allowance for probable delinquencies," as directed in the Act of 1882, the commissioner was not authorized to impose the whole debt of Hubbert on a few of the taxpayers. What is "due allowance?" "*Due* means that which law or justice requires to be done. *Due* rights mean just rights, legal rights." Ryerson v. Boorman, 8 New Jersey Equity, 705.

Due, according to the dictionaries, also means proper, becoming, reasonable. Were the allowances made by the commissioner and court below just, proper, becoming or reasonable? Only a few executions were issued on Hubbert's second judgment. (See affidavit, Record, page 69.) Ten taxpayers were selected, against whom executions were issued.

In allowing for "probable delinquencies," the commissioner went upon the theory that all the hundreds of other property owners would not pay; that the probable delinquents would be 2,160 of the 2,170 and more taxpayers named in his report and against whom judgment was rendered for the amounts respectively set opposite their names, and that only a few would not resist payment. This was not "due allowance." It was arbitrary, unjust, improper and unreasonable. It placed a premium upon the delinquent taxpayer and punished the property owner who was willing to abide by the law.

The framers of the Act of 1882 never contemplated or in-

tended to authorize such a result, and the whole proceeding was without the slightest justification under this special law, and from beginning to end a nullity. It may be presumed that all assessors anticipate some delinquencies, but they do not for that reason assess or levy taxes upon any person or property, without reference to the amount required to be raised for public purposes. The law requires the taxes for this sum, and no more, to be levied equally upon the property of all, with the assumption that all will pay, and any other scheme would violate the essential and elemental principles of equality and uniformity.

If the ten taxpayers, including the Campbellsville Lumber Company, against whom executions were issued for Hubbert's claim, had promptly settled with the marshal, although knowing they were paying an extortionate demand, they would have been guilty of a great folly not only, but would thereby have served notice upon other bondholders that they stood ready to assume the entire indebtedness of Taylor county; for if they were thus liable to Hubbert, any other holder of bonds or coupons could institute a similar proceeding under the special law, obtain judgment, without notice, have another like assessment, and issue his execution against the same ten individuals, and this process could be repeated until they had paid the whole $125,000 of the railroad obligations of the county. It seems to counsel for the respondent that no court, upon proper consideration, could sanction any law or any construction of any statute, leading to results so disastrous to the citizen or corporation willing to bear and promptly to pay their just proportion of the public dues.

Nor was the excessive assessment and levy against the respondent authorized by section 8 of the Act of 1882. That section reads:

> "The court shall make orders for the safe-keeping and disposition of the money to be collected under this act; and if the amount collected shall be more than necessary to pay the judgment and costs, the residue shall be paid over to the commissioner of the sinking fund of said county, to be used for the payment of the principal and interest of bonds issued under the act to which this is an amendment."

The court, in its final judgment, made no orders for the safekeeping and disposition of the money; it never retained the case for any purpose, and there is no such office or officer as the commissioner of the sinking fund of Taylor county.

"If the amount collected shall be more than necessary to pay the judgment and costs" does not require that the amount shall or should be more. The words just quoted imply the contrary. But were it held that in certain contingencies something over the judgment and costs might be collected, and the excess paid over to some officer of the county, this would not impart validity to the assessments made by the Circuit Court; executions against a few taxpayers would satisfy the claim of Hubbert, and there would be no more collected, and the whole burden would still remain on these few property owners, and every objection herein urged remain in force.

IV.

The notice published by the commissioner in the Marion county paper was insufficient. It gave the style of the court and case, and then read:

> "Notice is hereby given that I have filed in court my report in the above case, showing the amount which it will be necessary for each of the taxpayers of Taylor county to pay, in order to pay off the judgment herein and that said report is subject to exceptions to be filed in the clerk's office, until January 7, 1901." (Signed) "David L. May, Commissioner." (Record, page 63).

Giving the utmost effect to this publication, it simply indicated that the taxpayers of Taylor county should be assessed to pay the original judgment of Hubbert. That was the "judgment" referred to, because there had then been no other judgment. His motion for the appointment of a commissioner (Record, page 13), was that he "moves the court to refer this cause to a commissioner with instructions to ascertain and report on a day to be named in the order, the amount which it will be necessary for the holders or

owners of real and personal property in Taylor county, subject to taxation under the revenue laws of the State, to pay *in order to raise promptly, in proportion to the value of such property owned by each, a sum sufficient to discharge the judgment herein and all costs of collecting the same* (italics ours), making due allowance for probable delinquencies."

> "When notice is given by publication, and the defendant does not appear, the court does not acquire jurisdiction to grant any relief, except that demanded in the petition or complaint." Vorce v. Page (Nebraska), 44 N. W. Rep., 452.

It is certain that by this notice the Campbellsville Lumber Company was not warned that it would be required to pay one twenty-third of Hubbert's judgment against Taylor county.

There were other defects in this notice. The act of 1882 (section 5) permitted a publication "in Taylor or Marion county." Why did Hubbert cause the publication to be made in Marion county and not in Taylor county, where the property lay and the people to be affected resided? The record is silent on this question. Did he select a foreign county with the expectation or hope that his "notice" would never be seen? Did he believe the people of Taylor county read their own home paper and were not subscribers to the papers of other counties? Has any attempt been made by Hubbert to show that the Marion county paper circulates extensively or at all in Taylor county, or that at Campbellsville, its county seat, there is no paper? But no matter where published, the notice was addressed to no one, described no property, and named no taxpayer. "Service by publication can be had only against persons who have been made defendants, and service against a person not named in the bill and complaint as a defendant is a nullity." Hansen vs. Klicha, 78 Ill. App., 177. The affidavit of Walling (Record, page 66) shows that "neither the Campbellsville Lumber Company nor this affiant ever had any knowledge of or notice of the said judgment (the last judgment or execution) until and not before thirty-four (34) days prior to the date of this affidavit (May 24, 1901); that the Campbells-

ville Lumber Company had no opportunity to defend" before the time of its motion to set aside the judgment against it on the ground that it was void.

In another affidavit (Record, page 69), it is stated and was never contradicted "that if it were desired or ever had been desired in this case to serve any process upon the Campbellsville Lumber Company, which is a corporation organized and existing under the laws of Kentucky, and doing business in Taylor county, it would have been an easy matter to give to said company notice or serve process upon it."

> "In Lot Two vs. Swetland, 4 Greene (Iowa), the court said: "It is the obvious policy of the law to secure actual service of notice upon a party against whom judicial proceedings have been commenced, and unless a court is satisfied that every reasonable effort has been exhausted to secure actual service, the uncertain method of giving notice by publication should not be resorted to."

Two cases were relied on in the lower court as justifying the notice by publication given in the case at bar. They have no bearing in this case. It is conceded by every one that under public and general laws in relation to taxation notice to the taxpayer by publication in a newspaper where the property sought to be affected is situate may be sufficient. It is denied by respondent that in a judicial proceeding whether in a State or in any Federal Court a notice other than actual under a special and private statute can authorize a personal judgment against a defendant.

In Lent vs. Tillson. 140 U. S., 316-326, it was decided that, under a general and public law, in relation to street assessments, a notice by publication for not less than ten days in two daily newspapers in the city of San Francisco, where the property was situate, was sufficient to bind those affected on the particular street proposed to be improved and mentioned in the publication.

In Paulsen vs. City of Portland, 149 U. S., 30-40, it was said:

> "It would seem that when notice was in fact given, notice whose sufficiency is not challenged," etc.

What relevancy these cases may have to the notice now under consideration, it is difficult to perceive.

V.

Reviewing this case, it will be observed that Hubbert, in his affidavit, which was the basis of the whole proceeding, failed to show that he was entitled to the remedies he sought to obtain. Section 10 of the Act of 1882 provided that "the bonds to be issued under the act to which this is an amendment shall, on their face, stipulate that the holders of any of them, or any coupon thereof, shall be entitled to the remedies for the collection for the same herein, and in the act to which this is an amendment, provided for." His affidavit set forth no such stipulation, and the affidavit of Walling (Record, page 67) shows that none of the bonds ever issued by Taylor county contained the stipulation. A form of the bonds and coupons was filed with Walling's affidavit (Record, page 68), and this contains no reference to or mention of the Act of 1882, or section 10 thereof.

Section 10 required, as a condition precedent to the exercise of the remedy given by the Act of 1882, that the coupons, or bonds, should, on their face, have contained the stipulation that the remedy was available.

By the opinion of the Circuit Court of Appeals (Record, pages 83-87) it was decided that section 10 was a mandatory provision and that in the absence from the bond of this stipulation the remedies provided in the Act of 1882 could not be enforced.

There is no hard and fast rule for determining whether an act be mandatory or directory, but the language of section 10 is imperative, and it is conceded that the provision was disregarded so far as the coupons herein sued on are concerned. Respondent disclaims the contention that the failure to incorporate in the bonds and coupons the provision that the holders thereof should be entitled to the remedy under the Act of 1882 rendered the bonds invalid. It is, however, confidently urged that the absence of that stipulation deprived the holders of the bonds or coupons issued by Taylor county of the remedy given in the Act of 1882. The Legislature of Kentucky had some intention,

when section 10 was inserted in the act. There could have been but one purpose for its insertion. The evident and only reason for it was that, unless the bonds and coupons contained the stipulation, the remedy would be unavailable. If an affirmative statute, introductive of a new law, directs a thing to be done in a certain manner, that thing can not, even though there are no negative words, be done in any other manner. Cook v. Kelly, 12 Abb. Pr., 35; Commissioners of the Poor v. Gains, 3 Brev., 396. The books abound with authorities sustaining the proposition that a statute introductive of a new and extraordinary remedy shall be strictly pursued, and more especially when it is to operate against a municipality or its people.

VI.

The purchaser of municipal securities is bound by the statute therein recited, and may not invoke the aid of another statute not referred to in his bond without bringing himself within its terms.

In McClure vs. Town of Oxford, 4 Otto, 429, Bk. 24, L. Ed., 129, the Chief Justice said:

> "Every dealer in municipal bonds, which upon their face refer to the statute under which they were issued, is bound to take notice of the statute and of all its requirements. . . . These bonds, therefore, carried upon their face unmistakable evidence that the forms of the law under which they purported to have been issued had not been complied with, because thirty days had not elapsed between the time the law took effect and the date of the election. If a purchaser may be, as he sometimes is, protected by false recitals in municipal bonds, the municipality ought to have the benefit of those that are true."

The validity of the same bonds came before the court in the later case of Crow vs. Township of Oxford, 119 U. S., 215, Bk. 30, L. Ed., 390, wherein Mr. Justice Blatchford said:

"The whole point of the contention in favor of the validity of the bonds is based on the proposition that the bonds were in fact issued under the authority of, and in compliance with, the provisions of the Act of March 2, 1872, instead of the Act of March 1, 1872. The plaintiff, being referred by the bonds to the Act of March 1, 1872, as the statute under which they were issued, was bound, as was said in the McClure case, to take notice of the statute and all its requirements. If, finding the bonds invalid under that statute, as he is held by law to have done, he claims the right to refer to the Act of March 2, 1872, as the source of authority, because that Act was in force from March 7, 1882, he was bound to take notice of the requirements of that Act. . . . The recitals in the bonds could not avail him, because as to the only Act recited, that of March 1, 1872, that Act was not in force long enough before the election to allow the required notice to be given, and, as to the Act of March 2, 1872, the records, which showed proceedings not in conformity with it, and the bonds, *by the absence of all reference to it, and by their* recitals as to the Act of March 1, 1872, excluded the *possibility that the town officers issued the bonds, or intended to issue them, under the authority of, or in pursuance of, the Act of March 2, 1872.*"

This doctrine was reaffirmed in Gibson vs. Dayton, 123 U. S., 59, Bk. 31, L. Ed., 75. The Chief Justice again said:

"It appears on the face of the bonds sued for that the subscription was made under and by virtue of the Act of February 18, 1857, and that the vote of the town was taken at a special town meeting called upon the 'application in writing of fifty legal voters of said town,' which is in accordance with the provisions of that act. The Act of March 6, 1867, which the plaintiff now claims is sufficient to support the bonds, requires that the application for the town meeting shall be made by 'twenty voters and taxpayers.' The record does not show that any of those who signed

> the application for the meeting at which the vote was taken were taxpayers. It thus appears from the bonds themselves not only that they were issued under the Act of 1857, but that they were not issued under that of 1867."

The people of Taylor county never had anything to do with the passage of either the Act of 1878 or the Act of 1882. The creditors drew both acts, had them enacted by the Legisture and selected their own language expressive of the obligations they desired the county to assume. There is no evidence that anybody in Taylor county ever heard or knew of the Act of 1882 until this proceeding was ended.

The bonds sued on stated on their face that they were issued under the act approved March 18, 1878. Hubbert did not bring himself within the terms of either act.

An inspection of the Act of 1882 would have shown (section 1) that it contemplated the issuance of $150,000.00 of bonds and that it required (section 10) a stipulation or contract as to a special and drastic remedy. The bonds themselves stated that they were of an issue of $125,000.00, the amount authorized by the Act of 1878, and did not contain the stipulation required by the Act of 1882. The Act of March 18, 1878, provided in section 2 that "any *bona fide* holder or owner of any such bond or coupon, issued and delivered as aforesaid, on obtaining a judgment in any court of competent jurisdiction, against the said county, shall, if the county refuses for thirty days after a demand to levy and proceed in good faith to have collected a tax sufficient to pay any such judgment, interest and costs, be entitled, on application to the circuit court, or in vacation to the circuit judge of the Seventh Judicial district, after having notice thereof served on the judge of said county, to have an order made, based on the last preceding assessment, levying a tax and appointing a collector, whose duty it shall be to collect from the taxpayers of Taylor county sufficient to pay off such judgment, interest and costs, and the cost of collecting the same; and the collector so appointed shall have all the power given by law to the collectors of State revenue and county levies, and be liable in like manner," etc.

Hubbert did not show any demand upon the county and

refusal for thirty days to levy a tax. But had he done so, all the law entitled him to was a levy and assessment sufficient to pay his claim and costs, not four or five times the amount of his demand.

VII.

The Act of 1882 had been repealed long before the institution of Hubbert's action.

The Constitution of Kentucky, section 59, is as follows:

> "The General Assembly shall not pass local or special acts concerning any of the following subjects, or for any of the following purposes, namely:
>
> "1. To regulate the jurisdiction, or the practice, or the circuits of the courts of justice . . .
>
> "15. To authorize or to regulate the levy, the assessment or collection of taxes, or to give any indulgence or discharge to any assessor or collector of taxes or its sureties."

The schedule of the Constitution provides:

> "1. That all the laws of this Commonwealth in force at the time of the adoption of this Constitution, inconsistent therewith, shall remain in full force until altered or repealed by the General Assembly. * * * The provisions of all laws which are inconsistent with this Constitution shall cease upon its adoption, except that all laws which are inconsistent with such provisions as require legislation to enforce them shall remain in force until such legislation is had, but not longer than six years after the adoption of this Constitution, or unless sooner amended or repealed by the General Assembly."

The General Assembly of Kentucky, by an act approved October 17, 1892, in relation to fiscal courts, declared in sections 7 and 8 thereof, which sections are now also published as sections 1839 and 1840 of the Kentucky Statutes, that:

Sec. 1839. "The fiscal courts shall hold their sessions at the county seats of their respective counties, and shall have jurisdiction to levy each year for county purposes a poll tax on each male inhabitant of the county over twenty-one years of age, not exceeding one dollar and fifty cents, and an *ad valorem* tax on all property subject to taxation within the county, whether belonging to natural persons or corporations, companies or associations, not to exceed fifty cents on each one hundred dollars in value thereof as assessed for State purposes, unless an additional tax be required to enable the county or taxing district thereof to pay the interest on and provide a sinking fund for the extinction of indebtedness of the county or district created prior to September twenty-eighth, one thousand eight hundred and ninety-one, and for that purpose the fiscal court shall have jurisdiction to levy such additional tax as may be authorized by law in force prior to September twenty-eighth, one thousand eight hundred and ninety-one, and shall superintend the collection of all such tax."

Sec. 1840. "The fiscal court shall have jurisdiction to appropriate county funds authorized by law to be appropriated, to erect and keep in repair necessary public buildings, secure a sufficient jail and a comfortable and convenient place for holding court at the county seat; to erect and keep in repair bridges and other structures and superintend the same; to regulate and control the fiscal affairs and property of the county, make provision for the maintenance of the poor, and provide a poor-house and farm, and provide for the good condition of the highways in the county, and to execute all of its orders consistent with the law and within its jurisdiction, and shall have jurisdiction of all such other matters relating to the levying taxes as is by any special act now conferred on the county court or court of levy and claims."

These general laws enacted pursuant to the mandates of the Constitution of Kentucky confided to the fiscal courts

alone all rights and duties pertaining to taxation for county needs of every character.

It was stated in the opinion of the district judge that these laws did not repeal the Act of 1882, although they purported to transfer to the fiscal court all powers and duties with respect to the assessment and levying of taxes for any county purpose. Section 907 of the Kentucky Statutes was quoted as sustaining the view of the court. It reads:

> "All laws and parts of laws which authorize any county or subdivision thereof, or any city, town or incorporated district to become a stockholder in any company, association or corporation, or to obtain or appropriate money for, or to loan its credit to, any corporation, association or individual, except for the purpose of constructing or maintaining bridges, turnpike roads or gravel roads, are hereby repealed. But nothing in this act contained shall in any wise affect subscriptions of stock, the obtaining or appropriating of money or loaning of credit that may have been made or done before the passage of this act."

This act was passed June 28, 1893, after the foregoing quoted laws had been enacted. But it does not relate to or profess to govern the assessment or levy of taxes; and there is no contention herein by respondent that any stock subscription of Taylor county was invalid. Section 907 of the Kentucky Statutes has no possible concern with any question arising in the case at bar.

The Civil Code of Kentucky, a general law, gives all holders of judgments against Taylor county a complete remedy by the writ of mandamus. Civil Code of Kentucky, sections 474 to 477. Elliott v. Kitchen, 14 Bush, 289. The writ of mandamus is the only appropriate remedy for Hubbert in the Federal Court, and is an "adequate remedy." Thompson v. Allen County, 115 U. S., 550. The petitioner can not pronounce ineffective a remedy which he never tried.

The change of the laws and remedies in relation to taxation for all county purposes in obedience to constitutional mandates, and requiring a uniform procedure in such matters, was within the constitutional rights of the Legislature.

It was said by Mr. Justice Brewer, speaking for the whole court, in League v. Texas, 184 U. S., 156, Bk. 46, L. Ed., 480:

> "Indeed, generally speaking, a party has no vested right in a mere matter of remedy; that is subject to legislative change. And a new remedy may be resorted to unless in some of its special provisions a constitutional right of the debtor or obligor is infringed. 'There is no vested right in a mode of procedure. Each succeeding Legislature may establish a different one, providing only that in each are preserved the essential elements of protection.'"

See, also, Seibert v. Lewis, 122 U. S., 192.

IX.

There being no actual service of process on the Campbellsville Lumber Company, the personal judgment rendered against it was void. (See the judgment, Record, page 21). The Civil Code of Kentucky, section 419, provides that "no personal judgment shall be rendered against a defendant constructively summoned," etc. There is no pretense of any actual summons in this case against the Lumber Company. Were this a proceeding *in rem*, the court could not render a personal judgment. Graham v. Sublett, 6 J. J. Marshall (Ky.), 45. If the Lumber Company was ever before the Circuit Court prior to the last judgment, it was only by constructive service. No personal judgment can be rendered against a defendant constructively summoned and who has not appeared in the action. Harris v. Adams, 2 Duvall (Ky.), 141; Berry v. Berry, 6 Bush (Ky.), 594.

> "A personal judgment against a defendant who is not before the court, either by service of a summons or by entering his appearance is void." Woodside, etc., vs. Dowell, 13 Ky. Law Rep., 141.

The judgment and execution against respondent and other taxpayers (Record, page 70) were personal and general, and were not confined to Taylor county property. They

made all property held by persons also owning property in Taylor county, situated anywhere in Kentucky, liable, for the particular taxes assessed against property in Taylor county. The execution reads:

> "The President of the United States of America, to the Marshal of the Kentucky District: Greeting:—
>
> "You are hereby commanded, that of the estate of the Campbellsville Lumber Company you cause to be made the sum of one hundred and twenty-three and seventy-six one hundredths dollars, which Marc Hubbert lately in our Circuit Court of the United States of America, in the district of Kentucky, sitting in Louisville, recovered against it for debt and also the sum of $1.25, which was adjudged the said Marc Hubbert for his costs by him in that behalf expended, whereof the said Campbellsville Lumber Company is convict, as appears to us of record, and that you have the same before the judges of our said Circuit Court of the United States for the district of Kentucky, at Louisville, on the first Monday in June next, to render unto the said Hubbert his debt and costs aforesaid, and have then and there this writ.
>
> "Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Louisville, in the said district, this 23d day of April, in the year of our Lord, 1901, and of our independence, the 125.
>
> (L. S.) THOS. SPEED, C. C. C. K. D.
> By Henry F. Cassin, Deputy.
>
> A copy attest: THOS. SPEED, Clerk."

X.

Hubbert had no right to sue in this case, not being the owner of the coupons.

Among the causes assigned by respondent for setting aside the judgment in the case to which it was never a party was (affidavit of Walling, paragraph 3, Record, page 67) "that the plaintiff, Marc Hubbert, at the time of the institution of said suit was not a *bona fide* holder or owner of the

coupons or bonds upon which he obtained judgment, and that he was selected by the bondholders, or owners of said bonds and coupons, they being residents of the State of Kentucky, for the purpose, by a fictitious transfer to him, of obtaining jurisdiction in a Federal Court in Kentucky," etc. See County of Lake v. Harry H. Dudley, 173 U. S., page 243. The respondent raised this point at the "earliest practicable moment," which was immediately after ascertaining that a judgment and execution had been awarded against it in a case to which it was not a party, and in which it had no opportunity to defend.

Hubbert made no attempt to deny that he was not a real party plaintiff.

XI.

The Act of 1882 was always in contravention of the Constitution of Kentucky.

If it had prescribed merely a special method of collecting county taxes, properly levied and assessed by county officers, it might, under the former organic law of the Commonwealth, have been regarded as possibly within the competence of the legislative power, but, as it was designed to confer upon courts of general jurisdiction the power of levying and assessing taxes, it was and is obnoxious to the fundamental laws of the State which divide the three departments of government, and prohibit the exercise by either of powers properly belonging to other branches of the government. The present Constitution of Kentucky, sections 27 and 28 (Kentucky Statutes, page 96); the previous Constitution of Kentucky, sections 1 and 2 (Kentucky Statutes, page 67).

In Pennington vs. Woolfolk, 79 Ky., page 16, the Court of Appeals said:

> "The power to impose taxes is legislative, and can not be conferred, under our Constitution, upon a strictly judicial tribunal or officer. The power to assess property for taxation, that is, to apportion the tax upon the property which the Legislature has imposed it, is not judicial, and can no more be conferred upon a judicial tribunal than the power to levy taxes."

In McLean County Precinct vs. Deposit Bank of Owensboro, 81 Ky., page 254, the Court of Appeals referred to and confirmed the doctrine of the case of Pennington vs. Woolfolk, and held that the power to levy or collect taxes is not one of the inherent powers of any judicial tribunal, that the duty and power are legislative, and that if when the Legislature fails to enact proper legislation or to provide the means of collecting taxes imposed, the judiciary may interpose, the theory of the Government and the distribution of powers would be destroyed.

In the McLean county case, the court quoted with approval from Mr. Justice Matthews, and italicised these words:—

> "*The jurisdiction of courts is confined to compelling the State officers to perform their duties under State laws, and no substitute can be invented.*"

In the case of Slaughter, etc., v. City of Louisville, 89 Ky., pages 121 and 122, the Court of Appeals said: "By the Constitution of the State, the powers of the State are divided into three distinct departments—the legislative, executive and judicial. It is a fundamental principle that neither department can exercise the powers belonging to the other. It is well settled that the valuation of property, for the purpose of *ad valorem* taxes taxation is, in its character, a judicial act. (Cooley on Taxation, page 238). But, by the division of the powers of the Government in this State, it belongs to the ministerial class of duties (Pennington v. Woolfolk, 79 Ky., 13; Cincinnati, &c., R. Co. v. Commonwealth, 81 Ky., 497)." These decisions of the highest court of the State, construing mandates of the Constitution of Kentucky in force at the time the act of 1882 was passed and still in force, and forbidding strictly judicial tribunals to levy or assess taxes, are binding on the Federal Courts.

> "As it is the peculiar province of the highest court of a State to decide whether or not the method pursued in the assessment and collection of taxes is in conformity with the law of the State, this decision is controlling." Bailey vs. Magwire, 22 Wallace, 215, Bk., 22 L. Ed., page 854.

The Iowa act mentioned by our adversaries could never have been enforced in Kentucky without disregarding the uniform construction given to the Constitutions of the State by its highest court; and, moreover, it prescribed no such procedure as is sought herein to be upheld.

The act of 1882 was void, because in conflict with the first section of Article 14 of the Constitution, which prohibits any State from depriving any person of life, liberty or property without "due process of law;" and, assuredly, no State legislation, if legally enacted, could control or regulate the procedure of Federal Courts so as that they would be compelled to ignore the fundamental principles of the Constitution. "It was not the intention of Congress to leave the jurisdiction of the inferior Federal Courts to the regulation or control of State legislation." Mr. Justice Jackson, in speaking for the whole court, said, in Mexican Central R. R. Co. vs. Pinkey, 149 U. S., 194, Bk., 37 L. Ed., 705.

> "But it is well settled that no court can exercise at common law jurisdiction over a party, unless he is served with the process within the territorial jurisdiction of the court, or voluntarily appears. Kendall vs. United States, 37 U S., 12 Peters, 524; Harris vs. Hardemon, 55 U. S., 14 Howard, 334."

XII.

The respondent, upon the discovery that an execution had been issued against it, made a motion in the lower court to set aside the judgment on the ground that it was void, and to quash the execution. Having no notice or knowledge before of the judgment against it, this was the proper procedure. The Civil Code of Kentucky, section 763, declares:

> "Neither a void judgment, nor a judgment against a defendant who shall have been only constructively summoned, and shall not have appeared in the action; nor any judgment which can be set aside or modified by the court which rendered it, upon motion made after the term during which it was rendered, shall be reversed or modified by the Court of Appeals, until a

motion to set aside or modify the judgment shall have been made in the inferior court and overruled."

Under the laws of Kentucky, there is no statutory limitation of time within which such motion may be made. In the Federal practice, it was held in the case of the United States v. Wallace, 46 Federal Reporter, 569 and 570, that such a motion could be made at any time. Respondent proceeded promptly.

Respondent asks that the judgment of the Circuit Court of Appeals be affirmed.

Respectfully submitted,

ERNEST MACPHERSON,

Counsel for Campbellsville Lumber Co.

Appendix A.

CHAPTER 483.

An Act for the Benefit of Taylor County, Empowering it to Compromise its Debts, Issue Bonds and Levy and Collect Taxes to Pay the Same.

Be it enacted, by the General Assembly of the Commonwealth of Kentucky:

Section. 1. That the county of Taylor be, and it is hereby authorized and empowered to make and enter into any contract or contracts, with any person or persons, corporation or association of persons, for the compromise, purchase, or redemption of any and all bonds, coupons, judgments or other indebtedness of said county, whether the same be due or not due, growing out of the issue of any bonds or coupons heretofore issued by said county; and said county, acting through its county court, and such agents as may be appointed by the county court of Taylor county, are hereby authorized and empowered to execute and carry out such contracts, and for that purpose it is hereby authorized to issue, negotiate and deliver new bonds of said county, not exceeding one hundred and twenty-five thousand dollars, in such amounts as it may deem best, and on such time as the county may think proper, and bearing any rate of interest not exceeding eight per cent. per annum, with coupons attached to represent the interest, payable semi-annually at such time and place as it may think best. The bonds to be signed by the county judge and county court clerk, with the seal of said county attached, and the coupons on said bonds to be signed by the clerk alone. And it shall have the right to sell all or any number of said bonds at not less than their par value, the proceeds of which may be used to buy the present outstanding bonds of Taylor county, at rates not to exceed fifty cents on the dollar, or to exchange the same with the holders of bonds of Taylor county now outstanding, upon such terms as may be agreed to by the holders and the said county court of Taylor county and its agents, upon the surrender and cancellation of the old bonds: Provided, that in such exchange no greater rate shall be al-

lowed in exchange than fifty cents on the dollar for said old bonds. And the county clerk of said county shall keep a record of all bonds issued under this act, showing the date of such bond, when payable, the amount thereof, and the number of coupons attached to each bond; which record shall also show the numb and amount of bonds sold, and the number and amount exchanged for other bonds of said county. The records shall also show the number, amount of bonds and coupons taken up and canceled by sale or exchange of the new bonds, and said record shall be open at all times to the inspection of the taxpayers of said county.

Sec. 2. That the faith and credit of the county of Taylor be, and the same is hereby, pledged to carry out, in good faith, any and all contracts made by it for the issue, purchase, compromise and redemption of any and all bonds and coupons issued under the first section of this act; and any and all bonds and coupons issued and delivered under this act shall be valid and binding on the parties thereto; and any *bona fide* holder or owner of any such bond or coupon, issued and delivered as aforesaid, on obtaining a judgment, in any court of competent jurisdiction, against the said county, shall, if the county refuses, for thirty days after demand, to levy and proceed in good faith to have collected a tax sufficient to pay any such judgment, interest and costs, be entitled, on application to the circuit court, or, in vacation, to the circuit judge of the seventh judicial district, after having notice thereof served on the judge of said county, to have an order made, based on the last preceding assessment, levying a tax and appointing a collector, whose duty it shall be to collect from the taxpayers of Taylor county sufficient to pay off such judgment, interest and cost, and the cost of collecting the same; and the collector so appointed shall have all the power given by law to the collectors of State revenue and county levies, and be liable in like manner; *Provided, also*, that any collector appointed under this section shall, before he proceed to act, execute a bond, with good solvent surety, to be approved and attested by the judge of the said district, the same to be by him delivered to the Taylor county court clerk for safe keeping; and should the county court, held by county judge and justices, or by the county judge, fail, for ten days after demand in writing, to levy and pro-

ceed in good faith to collect a tax as provided in this act, then, and in that event, it is hereby made the duty of the circuit court, or judge thereof in vacation, being informed of such failure by any *bona fide* bond-holder or his attorney, to levy and have collected, as in case of a judgment, a tax to pay off semi-annual interest on past due coupons of bonds issued under this act, of which application the county court or judge thereof shall have ten days' written notice.

Sec. 3. That if at any time all the justices of the peace of Taylor county shall resign, or if at any time the number of justices, from death, resignation or other cause, be reduced to a less number than a majority of all the justices to which, by law, said county is entitled, then, and in that event, the county judge of said county, sitting as a court, shall have and exercise all the powers of the county court of Taylor county, within the meaning and purview of this act, and possess and exercise all the powers conferred upon the Taylor county court by this act.

Sec. 4. That it shall be the duty of all collectors appointed under the provisions of this act to make monthly reports, under oath, to the county treasurer of Taylor county of all moneys collected by him or them; and such collectors shall at once pay over to the county treasurer the amount of all moneys collected by him, less the commissions allowed by law or order of the court or judge making the levy. And it is hereby made the duty of the treasurer of Taylor county to deposit all moneys collected under the provisions of this act, so soon as he receives the same, in some solvent bank, with a paid-up capital of not less than $100,000, to the credit of Taylor county, which money shall be paid out by such bank only upon the check of the treasurer of Taylor county. And no such collector or treasurer shall have the right to use or loan said money, or any part thereof, for any purpose whatever, save and except as provided in this act.

Sec. 5. All such collectors shall collect the entire tax in his hands, and pay the same over to the county treasurer within six months from the time the tax-books are placed in his hands for collection. And it is hereby made the duty of the sheriff of Taylor county to collect all tax levied by the county court under this act; and should he fail for ten days, after the levy of any such tax and notice to him, to execute

bond, with good and sufficient surety, to be approved by the county court, then it shall be the duty of said county court to declare, by order of record, his office of tax collector forfeited. And in that case it is made the duty of the said county court to appoint a tax collector, and take bond from him, with good and approved surety, and fix, by order, the compensation of such collector. And if any sheriff or tax collector shall fail to collect or pay over the taxes, as provided in this act, to the county treasurer, such sheriff or collector so in default shall, with his sureties in his official bond, be liable to an action, on motion on ten days' notice in the Taylor circuit or common pleas courts, in which action the county of Taylor, in its own name, shall recover for any default of the sheriff or collector the amount due the county, with interest from the time it should have been paid, the costs of the action or motion, and ten per cent. damages on the amount found due and recoverable. And should the treasurer of Taylor county fail to pay over any money in his hands when ordered to do so by the Taylor county court, he and his sureties shall be liable in like manner as is herein provided in regard to sheriffs and tax collectors; and the Taylor county court, held by the county judge, shall have the right to require all sheriffs, tax collectors, and the treasurer of Taylor county to renew or give additional surety upon the official bonds of such officers, as often as he may think proper, so as at all times to have securities on said bonds good and solvent for any amount of money in their respective hands.

Sec. 6. That it shall be the duty of Taylor county to have an assessment, make a levy, appoint a collector, and have collected from the taxpayers of Taylor county, upon all property which is now or may hereafter be assessed for, and subject to, State revenue purposes, including the amount given in order to equalize law, to pay the semi-annual interest or past due coupons on all bonds issued under the provisions of this act, and also to pay off and take up the said bonds at maturity; and if the county court shall deem it proper, it may, in addition to the tax herein provided for, levy an additional tax upon the taxable property of said county to create a sinking fund to purchase any or all bonds and coupons issued under the provisions of this act.

Sec. 7. That the county court of Taylor county shall can-

cel all bonds and coupons purchased under the provisions of this act by writing on the face therof, with red ink, the following: "This bond has been bought in by Taylor county, and is not to be reissued;" and the county clerk, in the presence of the county judge, after having made a record of the bonds and coupons purchased under this act, shall burn the same.

Sec. 8. *Be it further enacted*, And as an inducement to the taxpayers of Taylor county to furnish the money with which to at once purchase the outstanding bonds and debts of said county, it is hereby made lawful for the taxpayers, or any of them, of Taylor county, to pay to the county treasurer his or their taxes due, or to become due, to said county, taking his receipt therefor; and all payments so made are declared a valid payment of such a one's share of the taxes due, or to become due, on account of the present indebtedness of said county, to the extent he or they may thus pay; and if the amount of the payment or payments thus made shall be equal to or exceed the whole amount of taxes due, and to become due, by such taxpayer, to take up the bonded debt of said county, then the taxpayer so paying shall be relieved from any further taxes under this act; and should any taxpayer pay, under this section, more than his proper quota of said indebtedness, then it shall be the duty of the county to refund to him the over-plus so soon as ascertained, or as may be agreed upon; and the treasurer of Taylor county shall keep a record-book, in which he shall open an account with the parties making advancements under this section, which book shall be carefully indexed, and show the full names of the payers, the amounts paid, and the date of payment; and the book shall be subject at all times to inspection by the parties making advances, and the Taylor county court and sheriff or collector; and the money or moneys thus collected shall be deposited by the treasurer in like manner as that taken in through the collectors, and be subject to the same restrictions in every respect; and the county court shall make the treasurer a proper allowance for his trouble under this act, to be paid out of the amount collected.

Sec. 9. That if any sheriff, collector, or the county treasurer, or other county officer having charge or control thereof, shall use, loan, or in any way misapply any money or moneys

collected or raised under this act, except the commissions to which, by law, they may be entitled, or shall be a party to any such misapplication of said fund, or any part thereof, or aid or assist any one so offending, shall be guilty of felony, and, upon indictment and conviction, shall be confined to the penitentiary of this Commonwealth for a period of not less than two nor over ten years.

Sec. 10. This act shall be in force and take effect from and after its passage.

Approved March 18, 1878.

Appendix B.

Act of General Assembly of Kentucky, 1881, volume 1, chapter 306, page 558:

An act to amend an act entitled, "An act for the benefit of Taylor county, empowering it to compromise its debts, issue bonds, and levy and collect taxes to pay the same," approved March 18, 1878.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. That the word "twenty-five," preceding the word "thousand," in the first section of said act, be, and the same is hereby, stricken out, and the word "fifty" inserted in lieu thereof.

Sec. 2. That in the event judgment shall be rendered on any bond or bonds which may be issued by the county of Taylor under the provisions of the act to which this is an amendment, or on any coupons of any such bond or bonds, such judgments shall constitute a lien upon all real and personal property in said county subject to taxation under the revenue laws of this Commonwealth.

Sec. 3. If the court rendering such judgment shall be of opinion that such serious obstruction is likely to be offered to the enforcement of any such judgment as will materially delay it, it shall, on motion of the plaintiff therein, refer the same to a commissioner, with instructions to ascertain and

report, on a day to be by it named, the amount which it will be necessary for the holders or owners of any such property to pay in order to raise promptly, in proportion to the value of such property owned by each, a sum sufficient to pay the said judgment, and all costs of the said suit, and the costs of collecting the same, making due allowance for probable delinquencies. Upon making any such reference, the said court shall make an order, and if need be, enforce it by process of contempt, directing the officers having charge of the books containing the last assessment for the purposes of State taxation, to deliver them to the said commissioner, to be by him used in making out his report.

Sec. 4. If, for any reason, such assessment books shall not be promptly forthcoming, the court shall provide for a new assessment under the direction and supervision of the said commissioner.

Sec. 5. Upon the completion of said report, the said commissioner shall file same in the clerk's office of said court, and publish in a newspaper published in Taylor or Marion county, once each week for three weeks, a notice of the filing of said report, and stating that the same will be subject to exceptions, to be filed in the said clerk's office, until a day to be mentioned in said notice, which day shall not be less than thirty nor more than forty days from the last day on which the said notice is to be published.

Sec. 6. On a day to be named by the court in the order referring the said judgment to the commissioner, or on the first day of the next regular or special term of the said court after the expiration of the time for filing exceptions, the said exceptions shall stand for hearing, but the hearing thereof may be continued from time to time, for good cause shown, or to suit the convenience of the court.

Sec. 7. When, after such correction as the court may deem proper, the said report shall be approved and confirmed, judgment shall be rendered against the parties named in the report for the amounts therein named, and at the expiration of ninety days from the date of said judgment several executions shall issue against all persons who have not then paid to the sheriff, or other officer who collects executions from said court, for the sums adjudged to be due by them respectively, which may be levied on any property subject

to the State revenue tax held by the defendants, respectively, or which was owned by them at the date of the judgment.

Sec. 8. The court shall make proper orders for the safe-keeping and disposition of the money to be collected under the provisions of this act; and if the amount collected shall be more than necessary to pay the judgment and costs, the residue shall be paid over to the commissioner of the sinking fund of said county, to be used for the payment of the principal and interest of bonds issued under the act to which this is an amendment.

Sec. 9. The sheriff or other officer who may collect such sums as shall be voluntarily paid to him under any such judgments shall be entitled to the same compensation which sheriffs receive for collecting taxes due to this Commonwealth.

Sec. 10. The bonds to be issued under the act to which this is an amendment shall, on their face, stipulate that the holders of any of them, or any coupon thereof, shall be entitled to the remedies for the collection for the same herein, and in the act to which this is an amendment, provided for.

Sec. 11. This act to take effect from its passage.

Approved February 27, 1882.

FILE COPY. 387

NO. 31.

Supreme Court of the United States

OCTOBER TERM, 1903.

Office Supreme Court
FILED
OCT 12 1903
JAMES H. McKENNEY,
Clerk

MARC HUBBERT, - - - - - - - - - - *Petitioner,*

VERSUS

CAMPBELLSVILLE LUMBER CO., - - *Respondent.*

SUPPLEMENTAL BRIEF FOR RESPONDENT.

ERNEST MACPHERSON,
For Respondent.

JOHN P. MORTON & COMPANY, LOUISVILLE, KY.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1903.

MARC HUBBERT, - - - - - - - *Petitioner*,

No. 31. *VERSUS*

CAMPBELLSVILLE LUMBER CO., - *Respondent*.

Supplemental Brief for Respondent.

Since the original briefs were filed herein the petitioner has filed a reply brief which requires to be noticed.

I.

It is argued that the excessive levies were proper because it would be difficult or inconvenient to collect assessments upon many taxpayers for small sums. The same reasoning would justify a plaintiff having many separate items against many defendants in treating the aggregate claim as owing by one only of the defendants, and thus save the cost and trouble of separate executions.

II.

The reply brief, at page 6, Division VII, seems to contend that the general acts cited in respondent's original brief, as repealing the special laws in relation to taxation in counties, are unconstitutional, and cites, among other cases, without quoting, Oshkosh Waterworks Co. v. Oshkosh, 187 U. S. 437. In that case it is said, page 439:

"It is well settled that while in a general sense the laws in force at the time a contract is made enter into its obligation, parties have no vested right in the particular remedies or modes of procedure then existing. It is true the legislature may not withdraw all remedies, and thus, in effect, destroy the contract; nor may it impose such new restrictions or conditions as would materially delay or embarrass the enforcement of rights under that contract according to the usual course of justice as established when the contract was made. Neither could be done without impairing the obligation of the contract. But it is equally well settled that the legislature may modify or change existing remedies or prescribe new modes of procedure without impairing the obligation of contracts, provided a substantial or efficacious remedy remains or is given, by means of which a party can enforce his rights under the contract."

It is then asserted in the brief that "the ordinary remedies are plainly inadequate." Why? Petitioner has never tried these remedies. As a matter of fact, these new laws are adequate, and have been enforced without difficulty.

Under the same division of the reply brief, it is urged, secondly, that the new general laws confiding to the Fiscal courts all powers in relation to county taxation did not repeal the special acts of 1878 and 1882 on this subject, and in support of this proposition Long v. City of Louisville, 97 Ky. 376, is relied on. That case merely decided that a suit under a general law filed and pending in the Louisville Chancery Court was unaffected by the new legislation. The Constitution itself excepted such cases.

The brief then cites O'Mahoney v. Bullock, 97 Ky. 774, but fails to quote this language of the court, at page 780:

"Section 171 does provide that 'all taxes shall be levied and collected by general laws,' but if this provision has any application to the state of case in hand the General Assembly has, since the adoption of the Constitution, provided by general laws how all taxes may be levied and collected on behalf of the various counties, and these general laws may be considered as amending or repealing the special provisions of the local act."

The other cases, Pearce v. Mason County, 99 Ky. 364, and Covington v. Highlands, 24 Ky. Law Rep. 433, are, so far as pertinent here, wholly in favor of respondent.

Section 465, Ky. Stats., is an old statute brought into the revision, and relates almost wholly to the criminal law. This section is concerned only with constructive repeals or repeals by implication, and may not be invoked in the construction of a statute which expressly declares that Fiscal courts "shall have jurisdiction of all such other matters relating to the levying of taxes as is by any special act now conferred on the county court, or a court of levy and claims."

Section 907, Ky. Stats., was discussed in respondent's original brief at page 20.

III.

By mistake in printing respondent's original brief, Subdivision VII was not properly numbered, and Subdivision VIII was omitted. The error is of no consequence, although it is anathematized in Latin by opposing counsel. The Seventh Subdivision began on page 17 of respondent's brief, and called attention to the failure of petitioner to make the demand required by Section 2 of the act of 1878, under which the bonds were issued, before making application to the circuit court to levy and assess the taxes. The statute of 1878 made this demand a jurisdictional fact. "Any *bona fide* holder or owner of any such bond or coupon issued and delivered as aforesaid, on obtaining a judgment in any court of competent jurisdiction against the county, shall, if the county refuses for thirty days after a demand to levy and proceed in good faith," etc., apply to the circuit court. The statute itself made a demand and refusal for thirty days a jurisdictional condition precedent. "Where demand is a step in the establishment of a lien, it can not be dispensed with." United States v. Pacific R. Co., 4 Dill. 71. A requirement by statute of demand or personal

notification is imperative. Cones v. Wilson, 14 Ind. 465, 466. Petitioner made no such demand. In a somewhat similar case, Chief Justice Marshall, in Thatcher v. Powell, 6 Wheat. 126, said :

> "We think this ought to have appeared in the record. The argument is that the judgment for these errors in the proceedings of the county court may be voidable but is not void ; that until it be reversed it is capable of supporting those subsequent proceedings which were founded on it. We think otherwise. In summary proceedings, where a court exercises an extraordinary power under a special statute prescribing its course, we think that course ought to be exactly observed, and those facts especially which give jurisdiction ought to appear in order to show that its proceedings are *coram judice*. Without this act of assembly, the order of sale would have been totally void. The act gives the power only on a report to be made by the sheriff. This report gives the court jurisdiction, and without it the court is as powerless as if the act had never passed."

IV.

Considering the sufficiency of the notice to the taxpayers, at page 10 of the reply brief, it is maintained that the tax involved in this case is a general tax, and Turpin v. Lemon, 187 U. S., is supposed to be an authority favorable to petitioner ; but that case was dealing with taxes assessed under a general public law in the ordinary and usual way ; and the court was careful to distinguish such a proceeding from extraordinary, unusual and special levies under particular, private, and special laws. Said the court (page 57) :

> "Exactly what due process of law requires in the assessment and collection of general taxes has never yet been decided by this court, although we have had frequent occasion to hold that, in proceedings for the condemnation of land under the laws of eminent domain, or for the imposition of special taxes for local improvements, notice to the owner at some stage of the proceedings, as well as an opportunity to defend, is essential."

In Glidden v. Harrington, 189 U. S., at page 258, this court says:

> "It can only be said that such notices shall be given as are suitable in a given case, and it is only where the proceedings are arbitrary, oppressive, or unjust that they are declared to be not due process of law."

If to pay county bonds an assessment and levy of a tax of $14,840.00 in order to raise less than $3,500.00, made under a private and special statute not referred to in the contract made by the county, without any actual notice to the taxpayer, and with only a notice by publication not in conformity with the statute and published in a paper foreign to the county, be not an arbitrary, oppressive, and unjust proceeding, it would be difficult to suggest a case that would fall within those terms. Surely, it is oppressive and unjust to levy a tax in such a manner as that a few taxpayers are compelled to pay the entire county obligation. Taxes are not debts in Kentucky, and the New England doctrine, if there be such, that any property-holder is responsible for all the corporate obligations, was never in force in Kentucky, and was never intended to be established under the special acts herein considered.

By levying a tax of $14,840.00 on all the taxpayers in proportion to the value of their property, the object is to raise less than $3,500. By issuing execution against a few of the taxpayers, levies against whom will satisfy plaintiff's claim, the entire indebtedness of the county is imposed upon these few, and about two thousand taxpayers escape. By merely increasing the levy, the whole burden may be placed upon one taxpayer. This arbitrary, oppressive, and unjust levy would under any system of taxation be a nullity.

The opinion of this court, in Rees v. Watertown, 19 Wallace, at page 119, reads:

> "As a part of this theory, the plaintiff argues that the court has authority to direct the amount of the judgment to be wholly made from the property belonging to any

inhabitant of the city, leaving the citizens to settle the equities between themselves. This theory has many difficulties to encounter. In seeking to obtain for the plaintiff his just rights, we must be careful not to invade the rights of others. If an inhabitant of the city of Watertown should own a block of buildings of the value of $20,000.00, upon no principle of law could the whole of the plaintiff's debt be collected from that property. Upon the assumption that individual property is liable for the payment of the corporate debts of the municipality, it is only so liable for its proportionate amount. The inhabitants are not joint and several debtors with the corporation, nor does their property stand in that relation to the corporation or to the creditor. This is not the theory of law, even in regard to taxation."

V.

The reply brief asserts that it has never been held in Kentucky that the power to assess and levy taxes may not be conferred on circuit courts. In addition to the cases referred to in respondent's original brief, to the effect that such powers may not be conferred upon circuit courts, Baldwin v. Shine, 84 Ky. 514, may be quoted:

> "The power to impose taxes can not be conferred upon a tribunal which has judicial powers alone; neither is their apportionment or assessment a judicial power. This is well settled in this State."

No Kentucky case hinting even a contrary view has been or can be cited. The same principle seems to prevail in the Federal courts. In Interstate Commerce Commission v. Brimson, 154 U. S., at page 485, Mr. Justice Harlan said:

> "The views we have expressed in the present case are not inconsistent with anything said or decided in those cases. They do not, in any manner, infringe upon the salutary doctrine that Congress (excluding the special

cases provided for in the Constitution as, for instance, in Section 2, Article II, of that instrument) may not impose upon the courts of the United States any duties not strictly judicial."

The Kentucky cases do not rest upon the notion that the courts may not levy or assess taxes because of the absence of legislative authorization, but upon the principle that the State Constitution forbids the exercise by circuit courts of such powers.

Respectfully submitted.

ERNEST MACPHERSON,
For Campbellsville Lumber Co.

Supreme Court of the United States.

No. 31.—October Term, 1903.

Marc Hubbert, Petitioner,
vs.
The Campbellsville Lumber Company.

On writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

[November 9, 1903.]

On March 18, 1878, the general assembly of Kentucky passed an act authorizing the county of Taylor to compromise its debts and issue new bonds of the county not exceeding in amount $125,000, and also authorizing the Circuit Court, in case of a judgment on any of such bonds and a refusal by the county within thirty days to levy a tax sufficient to pay it, to make an order based on the last previous assessment levying a tax and appointing a collector. On February 27, 1882, an amendatory act was passed increasing the issuable amount to $150,000, providing that any judgment rendered thereon should constitute a lien on all the real and personal property in the county subject to taxation, and also that, if the court rendering the judgment should be of opinion that such serious obstruction was likely to be offered as would materially delay the enforcement of the judgment, it should refer the matter to a commissioner with instructions to ascertain and report the amount proportionally necessary for the holders or owners of any such property to pay in order to raise promptly a sum sufficient to pay the judgment. Personal judgments were authorized against the parties found to be the owners of property within the limits of the county, to be enforced by executions as other personal judgments. Section 10 reads as follows:

"Sec. 10. The bonds to be issued under the act to which this is an amendment shall, on their face, stipulate that the holders of any of them, or any coupon thereof, shall be entitled to the remedies for the collection of the same herein, and in the act to which this is an amendment, provided for."

Bonds were issued by the county, some of which passed into the possession of the plaintiff, who brought suit and obtained judgment against the county in the Circuit Court of the United States for the District of Kentucky.

The bonds did not contain the stipulation referred to in section 10, but did contain the following recital:

"This is one of an issue amounting in all to $125,000, authorized by an act of the general assembly of the Commonwealth of Kentucky, approved March 18, 1878."

Each bond also bore the following endorsement:

"Issued by authority of an act of the general assembly of the State of Kentucky, approved March 18, 1878."

On application for further relief the Circuit Court awarded to the plaintiff the benefit of the special provisions of the amendatory act of 1882, but the Circuit Court of Appeals held that he was not entitled to them. (50 C. C. A. 435; 112 Fed. Rep. 718.) Thereupon the case was brought here on certiorari. (186 U. S. 485.)

Mr. Justice BREWER delivered the opinion of the Court.

Conceding, without deciding, that both acts of the general assembly of Kentucky were in all respects constitutional and valid, and that the proceedings of the Circuit Court were in strict compliance therewith, we notice only the single question of the effect of the omission from the bonds of the stipulation required by section 10, as well as of any reference to the amendatory act, and are of opinion that the omission is fatal to the special relief provided for in that act.

There is nothing in the nature of things nor in the terms of the two acts which prevents the parties, the county and the recipient of the bonds, from contracting for solely the remedies provided in the original act. The later act provided remedies not in lieu of but in addition to those given by the former. There is nothing on the face of the bonds to indicate that either of the parties had in contemplation the provisions of the amendatory act. On the contrary, the bonds in terms state that they are of an issue amounting to $125,000, authorized by the original act. As the amendatory act authorized the issue of $150,000, and as no reference is made to that act, the language of the bond plainly excludes it as the basis of authority, and therefore as plainly implies that the remedies by that act were not contracted for by the county.

We need not stop to inquire what would be the effect of a recital on the face of the bonds that they were issued under the authority of the amendatory act, or whether such recital would obviate the necessity of complying with the provisions of section 10, for there is no reference to such act, and the bonds on their face do not purport to be issued under its authority. So that the question is whether the plaintiff, in the absence of any such stipulation as is required by section 10, without any reference in the bonds to the amendatory act, and when they purport to be issued under the authority of the original act, can avail himself of the remedies not provided for by the original and only granted in the amendatory act.

Much is said in the opinion of the Court of Appeals as well as in the briefs of counsel as to the difference between a directory and a mandatory

provision, the plaintiff claiming that section 10 is simply directory, while the defendant insists that it is mandatory. In that opinion these authorities are cited:

"'By directory provisions,' says Judge Cooley, 'is meant that they are to be considered as giving directions which ought to be followed, but not as so limiting the power in respect to which the directions are given that it cannot effectually be exercised without observing them.' (Cooley's Constitutional Limitations, star page 74.)

"Lord Penzance, in *Howard* v. *Bodington*, (L. R. 2 P. Div. 211,) after commenting on the difficulty of gathering any rule from the cases, said: 'I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject matter; consider the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to be secured by the act, and upon a review of the case in that aspect decide whether the matter is what is called imperative or directory.'"

Without attempting to state any general rule, if indeed one such exists, for distinguishing between a directory and a mandatory provision, it is sufficient to say that when a statute provides an extraordinary remedy to the holder of bonds containing an express stipulation that he "shall be entitled" to that remedy, it should not be adjudged that he is also entitled to it in the absence of such stipulation, for it is a reasonable presumption that if the county in issuing the bonds intended to contract for such extraordinary remedy it would have complied with the express provision of the statute and incorporated the stipulation into the bonds. That the authority in this amendatory act to proceed directly against the several owners of property in the county is not an ordinary remedy for the collection of bonds is true of the State of Kentucky and generally of the States of the Union. Indeed, the original act gave something more than the ordinary remedy, and when the amendatory act provides for what must be conceded is under the circumstances an extraordinary remedy it would seem reasonable to hold that all of the provisions of the statute which grant such remedy should be complied with before it can be considered as contracted for.

We are of opinion that the Court of Appeals did not err, and its judgment is

Affirmed.

Mr. Justice WHITE and Mr. Justice MCKENNA concur in the result.

Mr. Justice HARLAN, Mr. Justice BROWN and Mr. Justice PECKHAM dissent.